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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विधि और न्याय मंत्रालय

(विधि कार्य विभाग)

नई दिल्ली, 22 अप्रैल, 2010

का.आ. 1219.—केन्द्रीय सरकार, स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 (1985 का 61) की धारा 36 के साथ पठित दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री फ्रांसिस ई. सल्दाना, सुश्री यास्मीन एन. कटपीटिया और सुश्री रति बी. अमरोलिया, अधिवक्ताओं का वृहत् मुंबई स्थित स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 के अधीन गठित विशेष न्यायालयों या सेशन न्यायालय या अपर सेशन-न्यायालय के समक्ष सभी दंडिक मामलों का संचालन करने के प्रयोजन के लिए तीन वर्षों की अवधि के लिए या अगले आदेश तक, इनमें से जो भी पूर्वतर हो, इस शर्त के अधीन रहते हुए विशेष लोक अभियोजक नियुक्त करती है कि श्री फ्रांसिस ई. सल्दाना, सुश्री यास्मीन एन. कटपीटिया और सुश्री रति बी. अमरोलिया, अधिवक्ता विशेष लोक अभियोजक के रूप में अपनी नियुक्ति की अवधि के दौरान ऊपर निर्दिष्ट किसी दंडिक मामले में भारत संघ या केन्द्रीय सरकार के किसी विभाग या कार्यालय के विरुद्ध स्वापक

औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 के अधीन गठित विशेष न्यायालयों या सेशन न्यायालय या अपर सेशन-न्यायालय के समक्ष उपसंज्ञात नहीं होंगे।

[फा. सं. 23(2)/2010-न्यायिक]

अशोक कुमार, अपर विधि सलाहकार

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

New Delhi, the 22nd April, 2010

S. O. 1219.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), read with Section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby appoints Shri Francis E. Saldanha, Ms. Yasmin N. Katpitia and Ms. Rati B. Amrolia, Advocates as Special Public Prosecutors, for the purpose of conducting all criminal cases before the Special Courts or Sessions Court or Additional Sessions Court constituted under the Narcotic Drugs and Psychotropic Substances Act, 1985 situated in the Greater Mumbai for a period of

three years or until further orders, whichever is earlier, subject to the condition that Shri Francis E. Saldanha, Ms. Yasmin N. Katpitia and Ms. Rati B. Amrolia, Advocates shall not appear against the Union of India or any Department or Office of the Central Government in any criminal case referred to above before the Special Courts or Sessions Court or Additional Sessions Court constituted under the Narcotic Drugs and Psychotropic Substances Act, 1985 situated in the Greater Mumbai during the period of their appointment as Special Public Prosecutors.

[F. No. 23(2)/2010-Judl.]

ASHOK KUMAR, Addl. Legal Adviser

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 4 मई, 2010

का.आ. 1220.—केन्द्रीय सरकार एतद्वारा अपराध प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कोलकाता उच्च न्यायालय, कोलकाता में दिल्ली विशेष पुलिस स्थापना द्वारा अन्वेषित किए जा रहे मामलों में अभियोजन अपीलों, पुनरीक्षणों या अन्य मामलों से उद्भूत मामलों का संचालन करने के लिए श्री हिमांशु डे. को केन्द्रीय अन्वेषण ब्यूरो के विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं. 225/11/2010-एवीडी-II]

मुकेश चतुर्वेदी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 4th May, 2010

S. O. 1220.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Himanshu De as Special Public Prosecutor of the Central Bureau of Investigation in the Calcutta High Court at Kolkata for conducting Prosecution, appeals, revisions or other matters arising out of the cases investigated by the Delhi Special Police Establishment.

[No. 225/11/2010-AVD-II]

MUKESH CHATURVEDI, Under Secy.

नई दिल्ली, 4 मई, 2010

का.आ. 1221.—केन्द्रीय सरकार एतद्वारा अपराध प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कोलकाता उच्च न्यायालय, कोलकाता और सिक्किम उच्च न्यायालय, गंगटोक और कोलकाता उच्च न्यायालय, पोर्ट ब्लेयर की सर्किट बेंच में दिल्ली

विशेष पुलिस स्थापना द्वारा अन्वेषित किए जा रहे मामलों में अभियोजन अपीलों, पुनरीक्षणों या अन्य मामलों से उद्भूत मामलों का संचालन करने के लिए श्रीमती बिमला सिंह को केन्द्रीय अन्वेषण ब्यूरो के विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं. 225/11/2010-एवीडी-II]

मुकेश चतुर्वेदी, अवर सचिव

New Delhi, the 4th May, 2010

S. O. 1221.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Smt. Bimla Singh as Special Public Prosecutor of the Central Bureau Investigation in the Calcutta High Court at Kolkata and in Sikkim High Court at Gangtok and Circuit Bench of Calcutta High Court at Port Blair, for conducting Prosecution, appeals, revisions or other matters arising out of the cases investigated by the Delhi Special Police Establishment.

[No. 225/11/2010-AVD-II]

MUKESH CHATURVEDI, Under Secy.

नई दिल्ली, 11 मई, 2010

का.आ. 1222.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए असम राज्य सरकार, राजनीतिक (ए) विभाग, दिसपुर की अधिसूचना सं. पीएलए. 181/2009/पीटी.11/99-ए दिनांक 30-04-2010 द्वारा प्राप्त सहमति से सरकारी धन के दुर्विनियोजन के लिए नॉर्थ कैचर हिल्स आटोनामस काउंसिल (एनसीएसएसी), एन.सी. हिल्स डिस्ट्रिक्ट, हैफलांग, आसाम में सरकारी कर्मचारियों की भागीदारी के अन्वेषण के संबंध में जैसा कि राष्ट्रीय अन्वेषण एजेंसी (एनआई) द्वारा राज्य सरकार को सं. 01/0001/2009/एनआईए/1258/1394-95 दिनांक 12-03-2010/23-03-2010 और मामला सं. एनआईए दिनांक 17-11-2009 की चार्जशीट में सूचित किया जाता है, भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120-बी सपठित धारा 420, 409, 467 के अधीन भ्रष्टाचार निवारण अधिनियम, 1988 के अधिनियम सं. 49 की धारा 13(1) (सी) और (डी) सपठित धारा 13(2) के अधीन मामला सं. 1/2009 (2009 की चार्जशीट सं. 2) संबंधी अपराधों के अन्वेषण के लिए और उसी संव्यवहार के अनुक्रम में किए गए प्रयत्नों, दुष्प्रेरणों और षडयंत्रों और अथवा उन्हीं तथ्यों से उद्भूत किन्हीं अन्य अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण असम राज्य पर करती है।

[सं. 228/23/2010-एवीडी-II]

मुकेश चतुर्वेदी, अवर सचिव

New Delhi, the 11th May, 2010

S. O. 1222.—In exercise of the powers conferred by sub-section (1) of section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Assam, Political (A) Department, Disput vide Notification No. PLA. 181/2009/Pt.II/99-A dated 30-4-2010, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Assam for investigation of the offences relating to involvement of public servants in North Cachar Hills Autonomous Council (NCHAC), N.C. hills District, Haflong, Assam for misappropriation of Government funds as reported by National Investigation Agency (NIA) to the State Government vide No. 01/0001/2009/NIA/1258/1394-95, dated 12-3-2010/23-3-2010 and in the Chargesheet dated 17-11-2009 in Case No. NIA. Case No. 1/2009 (Chargesheet No. 2 of 2009) under Sections 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 (Act No. 49 of 1988) and under Sections 120-B read with 420, 409, 467 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and any other offence/offences, attempts, abetments and conspiracy in relation to or in connection with the above mentioned offences any other offence/offences committed in course of the same transaction arising out of the same facts and simultaneously launching of criminal prosecution against the guilty persons.

[No. 228/23/2010-AVD-II]

MUKESH CHATURVEDI, Under Secy.

नई दिल्ली, 12 मई, 2010

का.आ. 1223.—केंद्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए पश्चिम बंगाल राज्य सरकार, गृह (राजनीति) विभाग, गुप्त अनुभाग की अधिसूचना सं. 241-पी.एस. दिनांक 8 फरवरी, 2010 और शुद्धिपत्र सं. 358-पी.एस. दिनांक 19 फरवरी, 2010 द्वारा प्राप्त सहमति से मो. मोहिबुर रहमान, फरक्का रेलवे स्टेशन, फरक्का, पश्चिम बंगाल, जिसके विरुद्ध भारतीय दंड संहिता 1860 (1860 का अधिनियम सं. 45) की धारा 489-बी, 489-सी सपठित धारा 120-बी के अधीन वैधानिक कार्रवाई करने के लिए राजस्व आसूचना निदेशालय, कोलकाता से केंद्रीय अन्वेषण ब्यूरो, नई दिल्ली को एक शिकायत डीआरआईएफ सं 02/सीएल/आईएमपी/डीआरआई/बीआरएम/2009-2010/3359 दिनांक 09-11-2009 प्राप्त हुई थी, के कब्जे से राजस्व आसूचना निदेशालय, कोलकाता द्वारा 26-10-2009 को रु. 4,99,500 की जाली भारतीय करेंसी नोट को जब्त करने के मामले के अन्वेषण के लिए और उक्त अपराध से संबंधित अथवा उन्हीं तथ्यों से उद्भूत किन्हीं अन्य अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण पश्चिम बंगाल राज्य पर करती है।

[सं. 228/22/2010-एवीडी II]

मुकेश चतुर्वेदी, अवर सचिव

New Delhi, the 12th May, 2010

S. O. 1223.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of West Bengal, Home (Political) Department, Secret Section vide Notification No. 241-P.S. dated 8th February, 2010 and Corrigendum No. 358-P.S. dated 19th February, 2010, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of West Bengal for investigation of case relating to seizure of Fake Indian Currency Notes of Rs. 4,99,500 effected on 26-10-2009 by the Directorate of Revenue Intelligence, Kolkata from the possession of Mohd. Mohibur Rehman at Farakka Railway Station, Farakka, West Bengal, against whom Central Bureau of Investigation, New Delhi received a complaint DRI. F.No. 02/CL/IMP/DRI/BRM/2009-2010/3359 dated 9-11-2009 for initiating legal action from the Directorate of Revenue Intelligence, Kolkata under Sections 489-B 489-C read with 120-B of the Indian Penal Code, 1860 (Act No. 45 of 1860) and any other offences committed in the course of the same transaction or emerging out of the same facts or facts in relation to aforesaid seizure.

[No. 228/22/2010-AVD-II]

MUKESH CHATURVEDI, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 5 मई, 2010

का.आ. 1224.—राष्ट्रीय बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9(2) के उपखंड (ख) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3(छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करके, एतद्वारा, श्री अजय माथुर (जन्म तिथि : 22-09-1958) को सनदी लेखाकार श्रेणी के अंतर्गत अधिसूचना की तिथि से तीन वर्षों की अवधि के लिए और/अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, बैंक आफ बड़ौदा के निदेशक मंडल में अंशकालिक गैर-सरकारी निदेशक के रूप में नामित करती है।

[फा. सं. 9/53/2009-बीओ-1]

सुमिता डावरा, निदेशक

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 5th May, 2010

S. O. 1224.—In exercise of the powers conferred by sub-section 3(g) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (b) of clause 9(2) of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme,

1970/1980, the Central Government, after consultation with Reserve Bank of India, hereby nominates Shri Ajay Mathur (DoB : 22-09-1958), as part-time non-official director under Chartered Accountant category, on the Board of Directors of Bank of Baroda for a period of three years from the date of notification and/or until further orders, whichever is earlier.

[F.No. 9/53/2009-BO-I]

SUMITA DAWRA, Director

मुख्य आयकर आयुक्त का कार्यालय

अधिसूचना संख्या-01/2010-11

उदयपुर, 05 मई, 2010

(आय कर)

का.आ. 1225.—आयकर अधिनियम, 1961 (1961 का 43 वां) की धारा 10 के खण्ड (23ग) की उपखण्ड (iv) के साथ पठित आयकर नियमावली, 1962 के नियम 2ग के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, उदयपुर एतद्वारा “सेवा मंदिर, उदयपुर (राजस्थान)” को कर निर्धारण वर्ष 2010-11 से 2012-13 तक के लिए निम्नलिखित शर्तों के अधीन रहते हुए उक्त उपखण्ड के प्रयोजनार्थ अधिसूचित करते हैं, अर्थात् :—

- (i) कर निर्धारिती अपनी आय का इस्तेमाल अथवा अपनी आय का इस्तेमाल करने के लिए उनका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है ;
- (ii) कर निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (v) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा भिन्न तरीकों से अपनी निधि (जेवर, जवाहरात, फर्नीचर आदि के रूप प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करेगा ;
- (iii) यह अधिसूचना किसी ऐसी आय के सम्बन्ध में लागू नहीं होगी, जो कि कारोबार से प्राप्त लाभ तथा अभिलाष हो जब तक कि ऐसा कारोबार उक्त कर निर्धारिती के उद्देश्यों की प्राप्ति के प्रासंगिक नहीं हो अथवा ऐसे कारोबार के सम्बन्ध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हो ;
- (iv) कर निर्धारिती आयकर अधिनियम 1961 के प्रावधानों के अनुसार अपनी आय विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष दाखिल करेगा ;
- (v) विघटन की स्थिति में इसकी अतिरिक्त राशियां और परिसम्पत्तियां समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जायेगी ;

यह अधिसूचना केवल संस्था की ओर से आय के प्राप्तकर्ता पर ही लागू होगी न कि इस तरह के प्राप्तकर्ता द्वारा किसी अन्य प्राप्ति अथवा आय पर। संस्था के आय की कराधेयता अथवा अन्यथा पर, आयकर अधिनियम 1961 के उपबन्धों के अनुसार पृथक् रूप से विचार किया जाएगा।

[संख्या मु.आ.आ./उदय/आ.अ.(तक.)/2010-11/294]

मुकेश भान्ती, मुख्य आयकर आयुक्त

OFFICE OF THE CHIEF COMMISSIONER OF
INCOMETAX

NOTIFICATION No. 01/2010-11

Udaipur, the 5th May, 2010

S. O. 1225.—In exercise of the powers conferred by sub-section (iv) of Clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2C of the Income-tax Rules, 1962, I, Chief Commissioner of Income-tax, Udaipur hereby notify the “Seva Mandir, Udaipur (Rajasthan)” for the purpose of the said sub-clause for the assessment years 2010-11 to 2012-13 subject to the following conditions, namely:

- (i) The assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established;
- (ii) The assessee will not invest or deposit its fund (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous year relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11;
- (iii) This notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business;
- (iv) The assessee will regularly file its return of income before the Income-tax authority in accordance with the provisions of the Income Tax Act, 1961;
- (v) That in the event of dissolution, its surplus and the assets will be given to a charitable organization with similar objectives;

This notification is applicable only to the recipients of income on behalf of the assessee and not to any other receipt or income of such recipients. Taxability or, otherwise of the income of the assessee would be separately considered as per the provisions of the Income Tax Act, 1961.

[No. CCIT/UDR/ITO(Tech.)/2010-11/294]

MUKESH BHANTI, Chief Commissioner of Income-tax

नई दिल्ली, 10 मई, 2010

का.आ. 1226.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उपखंड (ख) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खंड(ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री हिंदुपुर प्रदीप राव, संयुक्त सचिव एवं वित्तीय सलाहकार, वित्त मंत्रालय, नई दिल्ली को तत्काल प्रभाव से और अगले आदेशों तक, सिंडीकेट बैंक के निदेशक मंडल में निदेशक के रूप में नामित करती है।

[फा. सं. 6/1/2010-बीओ-1]

सुमिता डावरा, निदेशक

New Delhi, the 10th May, 2010

S. O. 1226.—In exercise of the powers conferred by clause (b) sub-section (3) of Section 9 of The Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominates Shri Hindupur Pradeep Rao, Joint Secretary and Financial Advisor, Ministry of Finance, New Delhi as a Director on the Board of Directors of Syndicate Bank with immediate effect and until further orders.

[F. No. 6/1/2010-BO-I]

SUMITA DAWRA, Director

नई दिल्ली, 11 मई, 2010

का.आ. 1227.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9 के उपखंड (1) और (2) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा (3) के खंड (ड) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री मनोरंजन दास (जन्म तिथि: 11-05-1955), विशेष सहायक, आन्ध्रा बैंक को नामित होने की तिथि से तीन वर्षों की अवधि के लिए अथवा आन्ध्रा बैंक के कर्मकार कर्मचारी के रूप में उनके पदभार छोड़ देने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, आन्ध्रा बैंक के निदेशक मंडल में कर्मकार कर्मचारी निदेशक के रूप में नामित करती है।

[फा. सं. 9/23/2009-बीओ-1]

सुमिता डावरा, निदेशक

New Delhi, the 11th May, 2010

S. O. 1227.—In exercise of the powers conferred by clause (e) of Sub-section 3 of Section 9 of The Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with Sub-clause (1) & (2) of Clause 9 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby appoints Shri Manoranjan Das (DoB: 11-05-1955), Special Assistant, Andhra Bank, as Workmen Employee Director on the Board of Directors of Andhra Bank for a

period of three years from the date of nomination or till he ceases to be a workmen employee of the Andhra Bank or until further orders, whichever is the earliest.

[No. 9/23/2009-BO-I]

SUMITA DAWRA, Director

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 11 मई, 2010

का.आ. 1228.—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ड के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ कर निर्धारण वर्ष 2009-2010 से आगे फाउंडेशन फार रिवाइटलाइजेशन आफ लोकल हेल्थ ट्रेडिंजिन्स, बंगलौर को निम्नलिखित शर्तों के अधीन अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात् :-

- (i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा ;
- (ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा ;
- (iii) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए इसके द्वारा प्राप्त राशि के संबंध में अलग खाता बही रखेगा जिसमें अनुसंधान करने लिए प्रयुक्त राशि दर्शाई गई हो, उक्त अधिनियम की धारा 288 की उप धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से ऐसी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा ;
- (iv) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित ऐसे विवरण की प्रति प्रस्तुत करेगा।

2. केंद्र सरकार यह अनुमोदन वापस ले लेगी यदि अनुमोदित संगठन :-

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा बही नहीं रखेगा; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा ; अथवा

- (ग) पैराग्राफ I के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा
- (ङ) उक्त नियमावली के नियम 5ग और 5ङ के साथ पठित उक्त अधिनियम की धारा 35 की उप-धारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 32/2010/फा. सं. 203/7/2010-आ.क.नि.-II]

अजय गोयल, निदेशक (आ.क.नि.-II)

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 11th May 2010

S.O. 1228.—It is hereby notified for general information that the organization M/s. Foundation for Revitalization of Local Health Traditions, Bangalore, has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of Section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5E of the Income-tax Rules, 1962 (said Rules), from Assessment year 2009-2010 onwards in the category of 'other Institution', partly engaged in research activities subject to the following conditions, namely :—

- (i) The sums paid to the approved organization shall be utilized for scientific research;
- (ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;
- (iii) The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of Section 139 of the said Act;
- (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization :—

- (a) fails to maintain separate books of accounts referred to in sub-paragraph (iii) of paragraph 1; or

- (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- (c) fails to furnish its statement of the donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
- (e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of Section 35 of the said Act read with rules 5C and 5E of the said Rules.

[Notification No. 32/2010/F. No. 203/7/2010-ITA-II]

AJAY GOYAL, Director (ITA-II)

नई दिल्ली, 3 मई, 2010

का.आ. 1229.—राष्ट्रपति, श्री योगेश अग्रवाल को, आवास एवं वाहन की सुविधा के बिना 3 लाख रुपये प्रति माह के समेकित वेतन पर, अथवा वाहन एवं आवास के साथ सचिव के प्रतिस्थापन वेतन पर पद का कार्यभार ग्रहण करने की तारीख से पांच वर्ष की अवधि के लिए, अथवा 65 वर्ष की आयु प्राप्त करने तक, अथवा अगले आदेश होने तक, इनमें से जो भी पहले हो, अन्तरिम पेंशन निधि विनियामक एवं विकास प्राधिकरण (पीएफआरडीए) के अध्यक्ष के रूप में नियुक्त करते हैं।

[फा. सं. 1/6/2007-पीआर]

डी. डी. माहेश्वरी, अवर सचिव

New Delhi, the 3rd May, 2010

S. O. 1229.—The President is pleased to appoint Shri Yogesh Agarwal as Chairman, Interim Pension Fund Regulatory and Development Authority (PFRDA) on a consolidated salary of Rs. 3 lakh per month without facility of house and car, or replacement pay of Secretary with car and house, for a period of five years from the date of assumption of charge of the post, or till he attains the age of 65 years or until further orders, whichever is the earliest.

[F.No. 1/6-2007-PR]

D. D. MAHESHWARI, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 5 मई, 2010

का.आ. 1230.— इस मंत्रालय की दिनांक 10-11-2009 की समसंख्यक अधिसूचना के क्रम में तथा चलचित्र (प्रमाणन) नियमावली, 1983 के नियम 7 एवं 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्र सरकार डॉ. वाइडंपल्ली कृष्ण, ललित श्री नालायाम, मकान सं. 1-5-62/3, चैतन्यपुरी, हैदराबाद-500060 को तत्काल प्रभाव से 2 वर्षों की अवधि के लिए अथवा अगले आदेश होने तक, इनमें से जो भी पहले घटित हो, केंद्रीय फिल्म प्रमाणन बोर्ड के हैदराबाद सलाहकार पैनल का सदस्य नियुक्त करती है।

[फा. सं. 809/3/2009-एफ (सी)]

अभिषेक कुमार, निदेशक (फिल्म)

MINISTRY OF INFORMATION AND TECHNOLOGY

New Delhi, the 5th May, 2010

S.O. 1230.—In continuation of Ministry's Notification of even number, dated 10-11-2009 and in exercise of the powers conferred by sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint Dr. Vaddepalli Krishna, Lalitha Sri Nalayam, H. No. 1-5-62/3, Chaitanyapuri, Hyderabad-500 060 as a member of the Hyderabad Advisory Panel of the Central Board of Film Certification with immediate effect for a period of two years or until further orders, whichever is earlier.

[F. No. 809/3/2009-F(C)]

AMITABH KUMAR, Director (Films)

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य और परिवार कल्याण विभाग)

नई दिल्ली, 18 फरवरी, 2010

का.आ. 1231.—दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार भारतीय दंत चिकित्सा परिषद् से परामर्श करने के पश्चात् और दिनांक 29-9-2009 को इस मंत्रालय की समसंख्यक अधिसूचना के अधिक्रमण में उक्त अधिनियम की अनुसूची के भाग-1 में एतद्वारा निम्नलिखित संशोधन करती है, अर्थात् :—

2. महाराष्ट्र स्वास्थ्य विज्ञान विश्वविद्यालय, नासिक द्वारा प्रदत्त दंत चिकित्सा डिग्रियों को मान्यता देने के संबंध में, दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-1 में क्रम सं. 60 के सामने स्तम्भ 2 और 3 की मौजूदा प्रविष्टियों में, नायर हास्पिटल डेंटल कालेज, मुम्बई के संबंध में निम्नलिखित प्रविष्टियाँ उसके अंतर्गत अन्तः स्थापित की जाएंगी, अर्थात् :—

“मास्टर ऑफ डेंटल सर्जरी

पेडोडॉन्टिक्स	एम.डी.एस., (पेडो.)
(यदि यह 26-6-2009 को	महाराष्ट्र स्वास्थ्य
अथवा उसके बाद प्रदान की	विज्ञान विश्वविद्यालय,
गई हो)	नासिक
ओरल पैथोलोजी	एम.डी.एस., (ओरल पैथो.)
(यदि यह 21-7-2009 को	महाराष्ट्र स्वास्थ्य विज्ञान
या उसके बाद प्रदान की	विश्वविद्यालय, नासिक”
गई हो)	

[फा. सं. वी-12018/1/2009-डी ई]

आर. शंकरन, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health & Family Welfare)

New Delhi, the 18th February, 2010

S. O. 1231.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16

of 1948), the Central Government, after consultation with the Dental Council of India and in supersession of this Ministry's Notification of even No. dated 29-09-2009, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely :—

2. In the existing entries of column 2 & 3, against I of Serial No. 60 in respect of Nair Hospital Dental College, Mumbai, in Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to recognition of dental degrees awarded by Maharashtra University of Health Sciences, Nashik, the following entries shall be inserted thereunder :—

“Master of Dental Surgery

Pedodontics	MDS (Pedo.), Maharashtra
(if granted on or after	University of Health
26-06-2009)	Sciences, Nashik
Oral Pathology	MDS (Oral Path.),
(if granted on or	Maharashtra University
after 21-07-2009)	of Health Sciences,
	Nashik”

[F. No. V.12018/1/2009-DE]

R. SANKARAN, Under Secy.

विद्युत मंत्रालय

नई दिल्ली, 3 मई, 2010

का.आ. 1232.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में दामोदर घाटी निगम, कोलकाता के प्रशासनिक नियंत्रणाधीन बोकारो ताप विद्युत केन्द्र, दामोदर घाटी निगम, बोकारो थर्मल, दाघानि, जिला-बोकारो, झारखंड कार्यालय को, जिनके 80 प्रतिशत कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है।

[सं. 11017/4/2010-हिंदी]

डॉ. एम. रविकांत, संयुक्त सचिव

MINISTRY OF POWER

New Delhi, the 3rd May, 2010

S. O. 1232.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (use for official purposes of the union) Rules, 1976 the Central Government hereby notifies Bokaro Thermal Power Station, Damodar Valley Corporation, Bokaro Thermal, DVC, District-Bokaro, Jharkhand under the administrative control of Damodar Valley Corporation, Kolkata, the 80% staff whereof have acquired working knowledge of Hindi.

[No. 11017/4/2010-Hindi]

Dr. M. RAVI KANTH, Jr. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 26 अप्रैल, 2010

का.आ. 1233.— भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खण्ड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गए मानक (को) में संशोधन किया गया/किये गए हैं :—

अनुसूची

क्रम	संशोधित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 15652 :2006, विद्युत प्रयोजनों के लिए विधुतरोधी मैट-विशिष्ट	2 मार्च, 2010	15-5-2010

इस भारतीय संशोधन की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, नागपुर, पूणे तथा तिरुवनन्तापुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ : 'ईटी' 02/टी-154]

आर. के. त्रेहन, वैज्ञा. 'ई.' एवं प्रमुख (विद्युत तकनीकी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 26th April, 2010

S.O. 1233 In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standard hereby notifies that amendment to the Indian Standards particulars of which is given in the Schedule hereto annexed has been issued :—

SCHEDULE

Sl.No.	No. & Year of the Indian Standards	No. and Year of the Amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 15652 : 2006, Insulating Mats for Electrical Purposes Specification	2 March, 2010	15-5-2010

Copy of this Amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref:ET 02 T-154]

R. K. TREHAN, Scientist 'E' and Head (Electrotechnical)

नई दिल्ली, 4 मई, 2010

का.आ. 1234.— भारतीय मानक ब्यूरो प्रमाणन विनियम 1988 के नियम 4 के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :— (माह 1 नवम्बर 2009 से 31 मार्च, 2010)

अनुसूची

क्रम संख्या	लाइसेंस संख्या सीएम/एल-	स्वीकृत करने की तिथि, वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक भा मा संख्या भाग अनु वर्ष
1	2	3	4	5
1.	9759514	04-11-2009	मै. आनन्द कुमार प्यारे लाल ज्वेल्स दरीबा पान मण्डी चौक, मुरादाबाद	गोल्ड एण्ड गोल्ड एलाएज, ज्वैलरी एलाएज/ आर्टिफैक्ट्स फाइननेस एण्ड मार्किंग आई एस : 1417 : 1999
2.	9759716	05-11-2009	मै. मोहन श्याम कल्याण दास कल्याण भवन अमीनाबाद रोड, अमीनाबाद, लखनऊ	गोल्ड एण्ड गोल्ड एलाएज, ज्वैलरी एलाएज/ आर्टिफैक्ट्स फाइननेस एण्ड मार्किंग आई एस : 1417 : 1999
3.	97597817	05-11-2009	मै. श्याम ज्वैलर्स सर्राफा मार्केट जिला-बदायूं	सिल्वर एण्ड सिल्वर एलाएज, ज्वैलरी आर्टिफैक्ट्स फाइननेस एण्ड मार्किंग आई एस : 2112 : 2003
4.	9760495	10-11-2009	मै. सरस्वती कंक्रीट उद्योग ग्राम-ककोरघना, शहदौदपुर, पोस्ट-शदर, जिला-जौनपुर	प्रीकास्ट कंक्रीट पाइप्स (विद एण्ड विदाउट रेनफोर्समेंट) आई एस : 458 : 2003
5.	9760697	10-11-2009	मै. दी एलाइड इन्डस्ट्रियल ट्रेडर्स 68/2-बी, वजीर हसन रोड, जिला-लखनऊ, उत्तर प्रदेश	क्राप प्रोटेक्शन इक्विपमेंट-हैण्ड आपरेटेड स्टिरअप टाइप स्प्रेयर आई एस : 1971 : 1996
6.	9760701	11-11-2009	मै. आकाश इन्डस्ट्रीज ग्राम व पोस्ट-सथियांव, जिला-आजमगढ़	पैकेज्ड ड्रिंकिंग वाटर (अदर देन पैकेज्ड नेचुरल मिनरल वाटर) आई एस : 14543 : 2004
7.	9761295	12-11-2009	मै. कृष्णा प्लायवुड प्रोडक्ट्स प्रा.लि. बी-13, साइट-1, इन्डस्ट्रियल एरिया हरिपुर, जलालाबाद, जिला-फैजाबाद, उत्तर प्रदेश-224001	प्लाइवुड फार जनरल पर्पजेज आई एस : 303 : 1989
8.	9761396	12-11-2009	मै. कृष्णा प्लायवुड प्रोडक्ट्स प्रा.लि. बी-13, साइट-1, इन्डस्ट्रियल एरिया हरिपुर, जलालाबाद, जिला-फैजाबाद, उत्तर प्रदेश-224001	बुडेन फलश डोर शटर्स (सालिड कोर टाइप) भाग-1, प्लाईवुड फेस पैनेल्स आई एस : 2202 : भाग 1 : 1999
9.	9761497	12-11-2009	मै. कृष्णा प्लायवुड प्रोडक्ट्स प्रा.लि. बी-13, साइट-1, इन्डस्ट्रियल एरिया हरिपुर, जलालाबाद, जिला-फैजाबाद, उत्तर प्रदेश-224001	ब्लाक बोर्ड्स आई एस : 1659 : 2004
10.	9761602	12-11-2009	मै. नेमानी प्लायवुड प्रा.लि. एएल-10, सेक्टर-13, गिडा, जिला-गोरखपुर, उत्तर प्रदेश	प्लाइवुड फार जनरल पर्पजेज आई एस : 303 : 1989
11.	9761703	12-11-2009	मै. नेमानी प्लाईवुड प्रा.लि. एएल-10, सेक्टर-13, गिडा, जिला-गोरखपुर, उत्तर प्रदेश	बुडेन फलश डोर शटर्स (सालिड कोर टाइप) भाग-1, प्लाईवुड फेस पैनेल्स आई एस : 2202 : भाग 1 : 1999
12.	9762705	16-11-2009	मै. अन्शु इन्जीनियरिंग वर्क्स जे-12/140, सी-1, चौकाघाट, जिला-वाराणसी	इलेक्ट्रिक सीलिंग टाइप फैनस एण्ड रेगुलेटर्स आई एस : 374 : 1979

1	2	3	4	5
13.	9764709	01-12-2009	मेसर्स ओरिएन्टल पेस्ट्रीसाइड्स, सी 18, 20 एवं 22 गवर्नमेन्ट इन्डस्ट्रियल इस्टेट, गोरखनाथ, गोरखपुर, उत्तर प्रदेश	क्विनालफास ई सी आई एस : 8028 : 1987
14.	9765913	08-12-2009	मै. प्रीमियर मिल्क फूड्स प्रा.लि. ग्राम-अनाधरापुरा, फरीदपुर रोड, जिला-बरेली, उत्तर प्रदेश-243001	स्किम्ड मिल्क पावडर-भाग-2 एक्स्ट्रा ग्रेड आई एस : 13334 : भाग 1 : 1998
15.	9766713	14-12-2009	मै. उज्ज्वल एक्वाटेक प्रा.लि. से-1, गवर्नमेन्ट इन्डस्ट्रियल इस्टेट, जिला-देवरिया	पैकेज्ड ड्रिंकिंग वाटर (अदर देन पैकेज्ड नेचुरल मिनरल वाटर) आई एस : 14543 : 2004
16.	9767109	15-12-2009	मै. ऐश बायोमेड इण्डिया प्रा.लि. प्लॉट नं. 77-78, ननुवा विहार, देवा रोड इन्डस्ट्रियल एरिया, चिनहट, जिला-लखनऊ	पैकेज्ड ड्रिंकिंग वाटर (अदर देन पैकेज्ड नेचुरल मिनरल वाटर) आई एस : 14543 : 2004
17.	9768010	18-12-2009	मै. डाला सीमेन्ट फैक्ट्री ए युनिट आफ जयप्रकाश एसोसिएट्स लि. पीओ-डाला, जिला-सोनभद्र, उत्तर प्रदेश-231207	पोर्टलैंड पोर्जोलाना सीमेन्ट भाग : 1 फ्लाईएश वेस्ट आई एस : 1489 : भाग 1 : 1991
18.	9768111	18-12-2009	मै. इनायती फुटवियर लि. डी-11, साइट-1, इन्डस्ट्रियल एरिया, जिला-उन्नाव	सेफ्टी, प्रोटेक्टिव एण्ड आक्युपेशनल फुटवियर फार प्रोफेशनल यूज-भाग 2 स्पेसिफिकेशन फार सेफ्टी फुटवियर आई एस : 15298 : भाग 2 : 2002
19.	9768515	22-12-2009	मै. शिवा एसोसिएट्स, कटी बगिया चौराहा, बनी, कानपुर रोड, जिला-लखनऊ, उत्तर प्रदेश-227101	प्लाइवुड फार जनरल पर्पोजेज आई एस : 303 : 1989
20.	9769012	29-12-2009	मै. इन्डिया पेस्ट्रीसाइड्स लि. प्लॉट नं. ई 18 से 23, यूपीएसआईडीसी इन्डस्ट्रियल एरिया, चिनहट, देवा रोड लखनऊ, उत्तर प्रदेश	लिण्डेन ड्रिंकिंग पावडर आई एस : 14834 : 2000
21.	9769214	29-12-2009	मै. गंगा वीनियर्स प्लॉट नं. एस 10 से 15, एस.2/2ए एवं 2/बी, एस. 17 से 19, यूपीएसआईडीसी इन्डस्ट्रियल एरिया, रामपुर रोड, परसाखेडा, जिला-बरेली, उत्तर प्रदेश	प्लाइवुड फार जनरल पर्पोजेज आई एस : 303 : 1989
22.	9769315	29-12-2009	मै. गंगा वीनियर्स प्लॉट नं. एस 10 से 15, एस.2/2ए एवं 2/बी, एस. 17 से 19, यूपीएसआईडीसी इन्डस्ट्रियल एरिया, रामपुर रोड, परसाखेडा, जिला-बरेली, उत्तर प्रदेश	प्लाक बोर्ड्स आई एस : 1659 : 2004
23.	9769416	29-12-2010	मै. गंगा वीनियर्स प्लॉट नं. एस 10 से 15, एस.2/2ए एवं 2/बी, एस. 17 से 19, यूपीएसआईडीसी इन्डस्ट्रियल एरिया, रामपुर रोड, परसाखेडा, जिला-बरेली, उत्तर प्रदेश	बुडेन फलश डोर शटर्स (सॉलिड कोर टाइप) भाग-1, प्लाईवुड फेस पैनल्स आई एस : 2202 : भाग 1 : 1999

1	2	3	4	5
24.	9770195	05-01-2010	मै. केशव मिल्क प्रोडक्ट्स प्रा.लि. 3 किमी स्टोन, साहबाद रोड, आँवला, जिला-बरेली, उत्तर प्रदेश-243301	स्किम्ड मिल्क पावडर-भाग-2 एकलुग ग्रैंड आई एस : 13334 : भाग 1 : 1998
25.	9770704	07-01-2010	मैसर्स एम बी डी इन्डस्ट्रीज सी 9, सेक्टर-20, जगदीशपुर इन्डस्ट्रियल एरिया, जगदीशपुर, जिला-सुल्तानपुर, उत्तर प्रदेश	बिटुमेन इमल्शन फार रोड (कैमिनिक टाइप) आई एस 8887 : 2004
26.	9771096	11-01-2010	मै. युनिवर्सल यार्न एण्ड टेक्स प्रा. लि. ग्राम-सहजनी, जिला -उन्नाव	काटन डक आई एस : 1422 : 1983
27.	9771197	11-01-2010	मै. युनिवर्सल यार्न एण्ड टेक्स प्रा. लि. ग्राम-सहजनी, जिला -उन्नाव	काटन ड्रिल आई एस : 177 : 1989
28.	9772102	15-01-2010	मै. बरेली प्लाइवोर्ड्स प्रा. लि. एस 63बी, एस 63, एस 64, एस 65, एस 66, एस 67, एस 68, एस 72, एस 73, एस 74, इन्डस्ट्रियल एरिया, परसाखेडा, जिला-बरेली, उत्तर प्रदेश-243502	प्लाईवुड फार कंक्रिट शटरिंग वर्क आई एस : 4990 : 1993
29.	9772203	15-01-2010	मै. बरेली प्लाइवोर्ड्स प्रा. लि. एस 63बी, एस 63, एस 64, एस 65, एस 66, एस 67, एस 68, एस 72, एस 73, एस 74, इन्डस्ट्रियल एरिया, परसाखेडा, जिला-बरेली, उत्तर प्रदेश-243502	मेरिन प्लाईवुड आई एस : 710 : 1976
30.	9772304	15-01-2009	मै. युनिवर्सल यार्न एण्ड टेक्स प्रा. लि. ग्राम-सहजनी, जिला -उन्नाव	स्पेशल प्लुफ्ड कैनवास एवं डक आई एस : 6803 : 1972
31.	9772607	20-01-2009	मै. एस आई इण्डस्ट्रीज, विलेज, बामनपुरी बागी, नैनीताल रोड, जिला-रामपुर, उत्तर प्रदेश	ब्लॉक बोर्ड्स आई एस : 1659 : 2004
32.	9772708	20-01-2009	मै. एस आई इण्डस्ट्रीज, विलेज, बामनपुरी बागी, नैनीताल रोड, जिला-रामपुर, उत्तर प्रदेश	प्लाईवुड फार जनरल पर्पजेश आई एस : 303 : 1989
33.	9772809	20-01-2009	मै. एस आई इण्डस्ट्रीज, विलेज, बामनपुरी बागी, नैनीताल रोड, जिला-रामपुर, उत्तर प्रदेश	वुडेन फलश डोर शटर्स (सालिड कोर टाइप) भाग-1, प्लाईवुड फेस पैनेल्स आई एस : 2202 : भाग 1 : 1999
34.	9772910	20-01-2009	मै. रामा पालीमर्स प्रा. लि. ग्राम-मकरा त्रिलोचन महादेव, जौनपुर वाराणसी हाइवे, पी.ओ. लहंगपुर, जिला-जौनपुर, उत्तर प्रदेश	प्लाईवुड फार जनरल पर्पजेश आई एस : 303 : 1989
35.	9773912	01-02-2009	मै. शशी केबल्स लि. यूनिट-II ए-3, अमौसी इण्डस्ट्रियल एरिया, कानपुर रोड, लखनऊ	एल्यूमीनियम कन्डक्टर्स फार ओवरहेड ट्रान्समिशन पर्पजेश भाग-5 एल्यूमीनियम कन्डक्टर्स-गैल्वनाइज्ड स्टील रेनफोर्समेन्ट फार एक्स्ट्राहाई वोल्टेज (400 केवी एवं एबव) आई एस : 398 : भाग 5 : 1992

1	2	3	4	5
36.	9774106	03-02-2009	मै. भारत आर्गेनिक, ए-2/3, यूपीएसआईडीसी इण्डस्ट्रियल एरिया, सण्डीला, जिला-हरदोई, उत्तर प्रदेश	कार्बन ग्रेन्यूलस, इन्कैप्सुलेटेड आई एस : 9360 : 1980
37.	9774712	08-02-2009	मै. प्रकाश पाइप्स, खसरा नं. 346 एवं 348, सदुल्ला नगर (हरौनी रेलवे स्टेशन से 3 किमी) परगना-बिजनौर, जिला-लखनऊ, उत्तर प्रदेश	प्रीकास्ट कंक्रीट पाइप्स (विद एण्ड विदाउट रेनफोर्समेन्ट) आई एस : 458 : 2003
38.	9774813	08-02-2009	मै. बृन्दावन बेवरेजेज प्रा. लि., बी-54-58, परसाखेडा इण्डस्ट्रियल इस्टेट, परसाखेडा, जिला-बरेली, उत्तर प्रदेश-243502	पैकेज्ड ड्रिंकिंग वाटर (अदर देन पैकेज्ड नेचुरल मिनरल वाटर) आई एस : 14543 : 2004
39.	9775310	11-02-2009	मै. हर्षित फूड एण्ड बेवरेजेज, ग्राम पयागपुर, पो. आ. आई टी आई (सिद्दीकीपुर), जिला-जौनपुर, उत्तर प्रदेश-222001	पैकेज्ड ड्रिंकिंग वाटर (अदर देन पैकेज्ड नेचुरल मिनरल वाटर) आई एस : 1543 : 2004
40.	9775613	15-02-2009	मै. जी एण्ड एस इन्टरप्राइजेज, प्लाट नं. 25 एवं 26 सहारा इस्टेट, जानकीपुरम, जिला-लखनऊ, उत्तर प्रदेश-226021	पैकेज्ड ड्रिंकिंग वाटर (अदर देन पैकेज्ड नेचुरल मिनरल वाटर) आई एस : 14543 : 2004
41.	9775714	15-02-2009	मै. शिवम स्पन पाइप, रामपुर से अमृतागंज रोड, ग्राम एवं पोस्ट- रंगीला नगर, लखीमपुर खीरी, उत्तर प्रदेश-262701	प्रीकास्ट कंक्रीट पाइप्स (विद एण्ड विदाउट रेनफोर्समेन्ट) आई एस : 458 : 2003
42.	9781204	23-02-2009	मै. अग्रवाल टिम्बर ट्रेडर्स, ग्राम- उदयपुर, गोला रोड, लखीमपुर खीरी	ब्लाक बोर्ड्स आई एस : 1659 : 2004
43.	9781305	23-02-2009	मै. अग्रवाल टिम्बर ट्रेडर्स, ग्राम- उदयपुर, गोला रोड, लखीमपुर खीरी	प्लाईवुड फार जनरल पर्पोजेज आई एस : 303 : 1989
44.	9781406	23-02-2010	मै. अग्रवाल टिम्बर ट्रेडर्स, ग्राम- उदयपुर, गोला रोड, लखीमपुर खीरी	वुडेन फलश डोर शटर्स (सालिड कोर टाइप) भाग-1, प्लाईवुड फेस पैनैल्स आई एस : 2202 : भाग 1 : 1999
45.	9779113	02-03-2010	मै. श्रेया टाइल्स एण्ड पेवर्स, 16 किमी स्टोन, लखनऊ फैजाबाद रोड, रामस्वरूप पब्लिक स्कूल के पास, ग्राम-अनौरा खुर्द, पोस्ट-अनौरा, लखनऊ, उत्तर प्रदेश	प्रीकास्ट कंक्रीट ब्लाक्स फार पेविंग आई एस : 15658 : 2006
46.	9780303	04-03-2010	मै. बालाजी प्लाईवुड इन्डस्ट्रीज, I एवं II, राजापुर इन्डस्ट्रियल एरिया, लखीमपुर, जिला-खीरी-262701, उत्तर प्रदेश	वुडेन फलश डोर शटर्स (सालिड कोर टाइप) भाग-1, प्लाईवुड फेस पैनैल्स आई एस : 2202 : भाग 1 : 1999
47.	9780404	04-03-2010	मै. बालाजी प्लाईवुड इन्डस्ट्रीज, I एवं II, राजापुर इन्डस्ट्रियल एरिया, लखीमपुर, जिला-खीरी-262701, उत्तर प्रदेश	ब्लाक बोर्ड्स आई एस : 1659 : 2004

1	2	3	4	5
48.	9780505	04-03-2010	मै. बालाजी प्लाईवुड इन्डस्ट्रीज, I एवं II, राजापुर इन्डस्ट्रियल एरिया, लखीमपुर, जिला-खीरी-262701 उत्तर प्रदेश	प्लाईवुड फार जनरल पर्पजेज आई एस : 303 : 1989
49.	9782509	15-03-2010	मै. भगत राम जयनारायण ज्वैलर्स प्रा.लि. 3/190 विवेक खण्ड गोमती नगर, लखनऊ	गोल्ड एण्ड गोल्ड एलाइज, ज्वैलरी एलाएज/ आर्टिफैक्ट्स--फाइननेस एण्ड मार्किंग आई एस : 1417 : 1999

[सं. सीएमडी-13:11]

सी.के. महेश्वरी, वैज्ञानिक जी (प्रमाणन)

New Delhi, the 4th May, 2010

S. O. 1234.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulation 1988, of the Bureau of Indian Standards, hereby notifies the grant of particulars of which are given in the following schedule. (Period from 01-11-2009 to 31-10-2010)

SCHEDULE

Sl. No.	Licence No. CM/L	Grant Date	Name & Address of the Party	Title of the Standard IS No. Part Sec. Year
1	2	3	4	5
1.	9759514	04-11-2009	M/s Anand Kumar's Pyare Lal Jewels, Dariba Pan Mandi Chowk, Distt: Moradabad	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking- Specification IS 1417 : 1999
2.	9759716	05-11-2009	M/s Mohan Shyam Kalyan Das Kalyan Bhawan Aminabad Road, Aminabad, Distt. : Lucknow	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking- Specification IS 1417 : 1999
3.	9759817	05-11-2009	M/s Shiam Jewellers Sarrafra Market, Buaaun Disst : Budaun	Silver and Silver Alloys, Jewellery/ Artefacts-Fineness and Marking Specification IS 2112 : 2003
4.	9760495	10-11-2009	M/s Saraswati Concrit Udyog Vill. Kakorghana, Sahdaupur, Post-Sadar, Distt: Jaunpur	Precast Concrete Pipes (with and without Reinforcement) IS 458 : 2003
5.	9760697	10-11-2009	M/s The Allied Industrial Traders . 68/2-B, Wazir Hasan Road, Distt : Lucknow	Crop protection equipment Hand- operated stirrup-type sprayer IS 1971 : 1996
6.	9760701	11-11-2009	M/s Akash Industries Village and Post-Sathiaon, Sathiaon, Distt : Azamgarh	Packaged Drinking Water (other than Packaged Natural Mineral Water) IS 14543 : 2004
7.	9761295	12-11-2009	M/s Krishna Plywood Products Pvt. Ltd., B-13, Site 1, Industiral Area Haripur, Jalalabad, Distt : Faizabad, (U. P.)	Plywood for general purposes IS 303 : 1989
8.	9761396	12-11-2009	M/s Krishna Plywood Products Pvt. Ltd., B-13, Site 1, Industiral Area Haripur, Jalalabad, Distt : Faizabad, UP-224001	Wooden flush door shutters (solid core type): Part 1 Plywood face panels IS 2202 : Part 1 : 1999
9.	9761497	12-11-2009	M/s Krishna Plywood Products Pvt. Ltd., B-13, Site 1, Industiral Area Haripur, Jalalabad, Distt : Faizabad, UP-224001	Block Boards IS 1659 : 2004
10.	9761602	12-11-2009	M/s Nemani Plywood Pvt. Ltd. AL-10, Sector-13, Gida, Distt : Gorakhpur, (U.P.)	Plywood for general purposes IS 303 : 1989

1	2	3	4	5
11.	9761703	12-11-2009	M/s. Nemani Plywood Pvt. Ltd. AL-10, Sector-13, Gida, Distt : Gorakhpur	Wooden flush door shutters (solid core type): Part 1 Plywood face panels IS 2202 : Part 1 : 1999
12.	9762705	16-11-2009	M/s. Ansu Engineering Works J-12/140, C-1, Chawkaghat, Distt : Varanasi	Electric ceiling type fans and regulators IS 374 : 1979
13.	9764709	01-12-2009	M/s. Oriental Pesticides C-18, 20 & 22 Govt. Industrial Estate, Distt : Gorakhpur	Quinalphos EC IS 8028 : 1987
14.	9765913	08-12-2009	M/s. Premier Milk Foods (P) Ltd. Village- Anadharapura,, Faridpur Road, Distt : Bareilly, U. P. 243001	Skim Milk Powder Specification Part 2 : Extra Grade, IS 13334 : Part 2 : 1992
15.	9766713	14-12-2009	M/s. Ujjwal Aquatech Pvt. Ltd., C-1, Government Industrial Estate Distt : Deoria	Packaged Drinking Water (other than Packaged Natural Mineral Water) IS 14543 : 2004
16.	9767109	15-12-2009	M/s. Ash Biomed India Private Limited Plot No. 77-78, Nanuva Vihar Deva Road, Industrial Area, Chinhat, Distt : Lucknow	Packaged Drinking Water (other than Packaged Natural Mineral Water) IS 14543 : 2004:
17.	9768010	18-12-2009	M/s. Dalla Cement Factory a Unit of Jaiprakash Associates Ltd. P. O. Dalla Distt : Sonbhadra-UP-231207	Portland pozzolana Cement Part 1 Flyash based IS 1489 : part 1 : 1991
18.	9768111	18-12-2009	M/s. Inyati Footwears Limited D-11, Site-1, Industrial Area, Distt: Unnao	Safety, Protective and Occupational Footwear for Professional use - Part 2 : Specification for Safety Footwear IS 15298 : Part 2 : 2002
19.	9768515	22-12-2009	M/s. Shiva Associates Kati Bagiya Chouraha, Bani Kanpur Road, Distt : Lucknow U.P.-227101	Plywood for general purposes IS 303 : 1989
20.	9769012	29-12-2009	M/s. India Pesticides Ltd. Plot No.E-18 to 23, upside Industrial Area Chinhat, Deva Road, Distt : Lucknow	Lindane Dusting Powder- Specification IS 14834 : 2000
21.	9769214	29-12-2009	M/s. Ganga Veneers PlotNo. S-10 to15, S-2/2A and 2/2B, S-17 to 19, UPSIDC Industrial Area Rampur Road parsakhera, Distt : Bareilly	Plywood for general purposes IS 303: 1989
22.	9769315	29-12-2009	M/s. Ganga Veneers Plot No. S-10 to15, S-2/2A and 2/2B, S-17 to 19, UPSIDC Industrial Area Rampur Road parsakhera, Distt : Bareilly	Block Boards IS 1659 : 2004
23.	9769416	29-12-2009	M/s. Ganga Veneers PlotNo. S-10 to15, S-2/2A and 2/2B, S-17 to 19, UPSIDC Industrial Area Rampur Road parsakhera, Distt : Bareilly	Wooden flush door shutters (solid Core type) Part 1 Plywood face panels IS 2202 : Part 1 : 1999

1	2	3	4	5
24.	9770195	05-01-2010	M/s. Keshav Milk Products Pvt. Ltd 3 K.M. Stone, Shahabad Road, Aonla, Distt : Bareilly	Skim Milk Powder Specification Part 2 : Extra Grade, IS13334 : Part 2 : 1992
25.	9770704	07-01-2010	M/s. M.B.D. Industries C-9, Sector-20, Jagdishpur Industrial Area, Jagdishpur, Distt : Sultanpur	Bitumen emulsion for roads (cationic type) IS 8887 : 2004
26.	9771096	11-01-2010	M/s. Universal Yarn and Tex Pvt. Ltd. Village Sahjani, Distt : Unnao	Cotton duck IS 1422 : 1983
27.	9771197	11-01-2010	M/s. Universal Yarn and Tex Pvt. Ltd. Village Sahjani, Distt : Unnao	Cotton Drills Specification IS 177 : 1989
28.	9772102	15-01-2010	M/s. Bareilly Plyboards Pvt. Ltd. Plot No. S-63B, S-63A, 64, S-65, S-66, S-67, S-68, S-72, S-73, S-74, Industrial Area, Parsakhera, Distt : Bareilly	Plywood for concrete shuttering work IS 4990 : 1993
29.	9772203	15-01-2010	M/s. Bareilly Plyboards Pvt. Ltd. S-63B, S-63A 64, S-65, S-66, S-67, S-68 S-72, S-73, S-74, Industrial Area, Parsakhera, Distt : Bareilly	Marine Plywood IS 710 : 1976
30.	9772304	15-01-2009	M/s. Universal Yarn and Tex Pvt. Ltd. Village Sahjani, Distt : Unnao	Special Proofed Canvas and Duck IS 6803 : 1972
31.	9772607	20-01-2009	M/s. S. I. Industries Village Bamanpuri Bagi, Nainital Road, Distt : Rampur	Block Boards IS 1659 : 2004
32.	9772708	20-01-2009	M/s. S. I. Industries Village Bamanpuri Bagi, Nainital Road, Distt : Rampur	Plywood for general purposes IS 303: 1989
33.	9772809	20-01-2009	M/s. S. I. Industries Village Bamanpuri Bagi, Nainital Road,, Distt : Rampur	Wooden flush door shutters (solid Core type) Part 1 Plywood face panels IS 2202 : Part 1 : 1999
34.	9772910	20-01-2009	M/s. Rama Polymers Pvt. Ltd. Vill-Makra Trilochan Mahadev, Jaunpur-Varanasi-Highway, P.O. Lahangpur Distt : Jaunpur	Plywood for general purposes IS 303: 1989
35.	9773912	01-02-2009	M/s. Shashi Cables Ltd. Unit II A-3, Amausi Industrial Area, Kanpur Road, Distt : Lucknow	Aluminium conductors for overhead transmission purposes: Part 5 Aluminium conductors, galvanized steel reinforced for extra high voltage (400 KV and above) IS 398 : Part 5 : 1992
36.	9774106	03-02-2009	M/s. Bharat Organics A-2/3, Upside Industrial Area Sandila, Distt : Hardoi	Carbofuran Granules, Encapsulated IS 9360 : 1980

1	2	3	4	5
37.	9774712	08-02-2009	M/s. Prakash Pipes Khasra No. 346 and 348, Sadulla Nagar, (3 Km from Harauni Railway Station) Pargana Bijnor, Distt : Lucknow-226005	Precast Concrete Pipe : IS 458 : 2003
38.	9774813	08-02-2009	M/s. Brindayan Beverages Pvt. Ltd. B-54-58, parasakhera, Industrial State, parasakhera, Distt : Bareilly U. P. 243502	Packaged Drinking Water (other than Packaged Natural Mineral Water) - Specification IS 14543 : 2004
39.	9775310	11-02-2009	M/s. Harshit Food and Beverages Village Payagpur, P.O. ITI (Siddiqueepur), Distt : Jaunpur, Uttar Pradesh 222001	Packaged Drinking Water (other than Packaged Natural Mineral Water) - Specification IS 14543 : 2004
40.	975613	15-02-2009	M/s. G. & S. Enterprises plot No. 25 & 26 Sahara Estate, Jankipuram, Distt : Lucknow, U. P. 226021	Packaged Drinking Water (other than Packaged Natural Mineral Water) - Specification IS 14543 : 2004
41.	9775714	15-02-2009	M/s. Shivam Spum Pipes Rampur to Amirtaganj Road, Village & Post Rangila Nagar, Distt : Kheri, Uttar Pradesh 262701	Precast Concrete Pipes : Plywood Face Panels IS 458 : 2003
42.	9781204	23-02-2009	M/s. Agarwal Timber Traders Village Udaipur, Gola Road, Lakhimpur, Distt : Kheri	Block Boards IS 1659 : 2004
43.	9781305	23-02-2009	M/s. Agarwal Timber Traders Village Udaipur, Gola Road, Lakhimpur, Distt : Kheri	Plywood for general purposes IS 303: 1989
44.	9781406	23-02-2010	M/s. Agarwal Timber Traders Village Udaipur, Gola Road, Lakhimpur, Distt : Kheri	Wooden flush door shutters (solid Core type) Part I Plywood face panels IS 2202 : Part I : 1999
45.	9779116	02-03-2010	M/s. Shreeya Tiles & Pavers 16 Km Stone, Lucknow Faizabad Road,, Village Anaura Khurd, Post Anaura Distt : Lucknow	Precast Concrete Blocks for Paving IS 15658 : 2006
46.	9780303	04-03-2010	M/s. Balaji Plywood Industries I & II Rajapur Industrial Area, , Lakhimpur, Distt : Kheri, UP 262701	Wooden flush door shutters (solid Core type) Part I Plywood face panels IS 2202 : Part I : 1999
47.	9780404	04-03-2010	M/s. Balaji Plywood Industries I & II Rajapur Industrial Area, , Lakhimpur, Distt : Kheri,	Block Boards IS 1659 : 2004
48.	9780505	04-03-2010	M/s. Balaji Plywood Industries I & II Rajapur Industrial Area, , Lakhimpur, Distt : Kheri,	Plywood for general purposes IS 303: 1989
49.	9782509	15-03-2010	M/s. Bhagat Ram Jainarain Jewellers Pvt. Ltd. 3/190 Vivek Khand Gomti Nagar, Distt. : Lucknow	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking - Specification IS 1417 : 1999

नई दिल्ली, 6 मई, 2010

का.आ. 1235.— भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खण्ड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिये गये हैं वे स्थापित हो गये हैं :—

अनुसूची

क्रम	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस /आई एसओ 21573-1 : 2006 भवन निर्माण की मशीनरी और उपस्कर कंक्रीट पंप भाग 1 शब्दावली और व्यवसायिक विशिष्टियाँ	-	31 मार्च 2009

इस भारतीय मानक की एक प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एम.ई.डी./जी.-2 : 1]

सी. के. वेदा, वैज्ञा. एफ एवं प्रमुख (यांत्रिकी इंजीनियरी)

New Delhi, the 6th May, 2010

S.O. 1235—In pursuance of clause (b) of sub-rule (1) of Rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the Indian Standards, particulars of which are given in the Schedule hereto annexed has been established on the date indicated against each :

SCHEDULE

Sl No.	No. & Year of the Indian Standard Established	No. and Year of the Indian Standards, if any, superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS /ISO 21573-1: 2006 Building construction machinery and equipment concrete pumps Part 1 Terminology and commercial specifications	—	31 March 2009

Copy of these Standard are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Tiruvananthapuram.

[Ref: MED/G-2 : 1]

C. K. Veda, Sc 'F' and Head (Technical Engineering)

नई दिल्ली, 7 मई, 2010

का.आ. 1236... भारतीय मानक न्यूरो (प्रमाणन) विनियम, 1988 के विनियम 6 के उपविनियम (3) के अनुसारण में भारतीय मानक न्यूरो पदद्वारा नीचे अनुसूची में दिए गए उत्पादों की मुहरांकन शुल्क अभिसूचित करता है :-

अनुसूची

भारतीय मानक सं.	भाग	अनु.	वर्ष	उत्पाद	इकाई	न्यूनतम मुहरांकन शुल्क बड़े पैमाने छोटे पैमाने पर	इकाई दर	स्लैब-1	स्लैब 1 में इकाई दर	स्लैब-2	स्लैब 3 में इकाई दर	इकाई दर	प्रचालन तिथि
1	2	3	4	5	6	7	8	9	10	11	12	13	14
12894			2002	ईंधन राख-चूने की ईंट-विशिष्ट	1000 पीस	38,000	32,000	5	सभी ईकाईयां	-	-	-	25-08-2009
11833			1986	झाई पाउडर फायर एक्सटिंग्यूशर्स फार मेटलफायर (इकोमार्क सहित)	1 पीस	72,000	61,000	66	800	-	-	33	17-11-2009
15778			2007	तंत और अतंत पेयजल वितरण व्यवस्था के लिए क्लोरीकृत पॉलीविनायल क्लोराइड (सीपीवीसी) पाईप-विशिष्ट	1 टन	1,77,000	1,50,000	30	सभी ईकाईयां	-	-	-	25-08-2009
6078			1986	लाईनमैन्स प्लायर	1 पीस	41,000	35,000	0-12	सभी ईकाईयां	-	-	-	08-04-2010
10002			1981	परफॉरमेंस रिकवरायमेंट फॉर कॉन्स्टेंट स्पीड कम्प्रेसन ड्राइव (डीजल) इंजनस फॉर जनरल पर्पस (एबव 20 के डब्ल्यू)	1 पीस	1,09,000	93,000	150	सभी ईकाईयां	-	-	-	08-04-2010
704			1984	क्रोअ गारस एंड क्लाअ बार्स	1 पीस	33,000	28,000	0-14	सभी ईकाईयां	-	-	-	08-04-2010
7868			1984	रोटरी ड्रिलरोड्सफोर ड्रिलिंग प्रिंसिपली इन कोल	1 पीस	36,000	31,000	1	सभी ईकाईयां	-	-	-	08-04-2010

1	2	3	4	5	6	7	8	9	10	11	12	13	14
6234			2003	सुवाहय अग्नि शामक पानी वाले (पंजाबित दाब)- विशिष्ट (दूसरा पुनरीक्षण) इकोमार्क सहित	1 पीस	84,000	71,000	12	सभी ईकाईयां	—	—	—	08-04-2010
8048			1985	इलेक्ट्रोकार्डियोग्राफ	1 पीस	1,69,000	1,44,000	30	सभी ईकाईयां	—	—	—	08-04-2010
302	2	24	1994	घरेलू और सम्बद्ध विद्युतसाधनों की सुरक्षा भाग 2 व शेष अपेक्षाएं अनुभाग 24 रेफ्रीजिरेटरस खाता प्रशीतित्र तथा बर्फ तैयार करने वाले साधन	1 पीस	1,21,000	1,03,000	20	सभी ईकाईयां	—	—	—	08-04-2010

[सं. के प्र वि/13 - 10]

सी. के. महेश्वरी, वैज्ञानिक जी (प्रमाणन)

New Delhi, 7th May, 2010

S.O. 1236.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the Marking Fee for the products given in the schedule :—

SCHEDULE

IS No.	Part	Sec	Year	Product	Units	Minimum Marking Fee (Rs.) LS Unit	SS Unit	Unit Rate Slab 1	Units in Slab 1	Unit Rate Slab 2	Units in Slab 2	Remaining	Effective Date
1	2	3	4	5	6	7	8	9	10	11	12	13	14
12894			2002	Pulverized Fuel Ash Lining Bricks	One Unit= 1000 Bricks	38,000	32,000	@Rs. 5 per unit	All units	—	—	—	25-08-2009
11833			1986	10% powder fire extinguisher for metal fires (including HCO Marking)	One Unit= One Fire Extinguisher	72,000	61,000	@Rs. 66	800	—	—	@Rs. 33	17-11-2009

1	2	3	4	5	6	7	8	9	10	11	12	13	14
15778			2007	Chlorinated polyvinyl chloride (CPVC) pipes for potable hot and cold water distribution supplies	One unit= One Tonne	1,77,000	1,50,000	@Rs.30	All units	—	—	—	25-08-2009
6078			1986	Lineman's Plier	One Unit= One Piece	41,000	35,000	Rs.0-12	All Units	—	—	—	08-04-2010
10002			1981	Performance Requirements for Constant Speed Compression Ignition (Diesel) Engines for General Purposes (Above 20 K W)	One unit= One Piece	Rs.1,09,000	Rs.93,000	Rs.150/-	All Units	—	—	—	08-04-2010
704			1984	Crow Bars and Claw Bars	One Unit= One Piece	Rs.33,000	Rs.28,000	Rs.0-14 Per unit	All Units	—	—	—	08-04-2010
7868			1984	Rotary Drill Rods for Drilling Principally in Coal	One Unit= One Piece	Rs.36,000	Rs.31,000	Rs.1-00 Per unit	All Units	—	—	—	08-04-2010
6234			2003	Portable Fire Extinguisher Water Type (Stored Pressure) Including ECO Mark Requirements	One Unit= One Piece	Rs.84,000	Rs.71,000	Rs.12 Per unit	All Units	—	—	—	08-04-2010
8048			1985	Electro-Cardiograph	One Unit= One Piece	Rs.1,69,000	Rs.1,44,000	Rs.30 per unit	All Units	—	—	—	08-04-2010
302	2	24	1994	Safety of Household and Similar Electrical Appliances- Refrigerators, Food Freezers and Ice Makers	One Unit= One Piece	Rs.1,21,000	Rs.1,03,000	Rs.20 per unit	All Units	—	—	—	08-04-2010

[No. CMD/13:10]

C. K. MAHESHWARI, Sec-G (Certification)

कोयला मंत्रालय

नई दिल्ली, 5 मई, 2010

का. आ. 1237.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का.आ. 1996 तारीख 15 जुलाई, 2009 जो भारत के राजपत्र के भाग-II, खंड-3, उप-खण्ड (ii) तारीख 25 जुलाई, 2009 में प्रकाशित की गई थी, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में जिसका माप 145.00 हेक्टर (लगभग) या 358.29 एकड़ (लगभग) है, कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी;

और केन्द्रीय सरकार का यह समाधान हो गया है कि उक्त भूमि में कोयला अभिप्राप्य है;

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इससे संलग्न अनुसूची में वर्णित 141.930 हेक्टर (लगभग) या 350.71 एकड़ (लगभग) माप की उक्त भूमि का अर्जन करने के अपने आशय की सूचना देती है ;

टिप्पण 1. : इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक संख्या एसईसीएल/बीएसपी/सीजीएम (पीएलजी)/भूमि/372, तारीख 15 जनवरी, 2010 का निरीक्षण कलेक्टर, कोरबा (छत्तीसगढ़) के कार्यालय में या कोयला नियंत्रक, 1, कार्डसिल हाउस स्ट्रीट, कोलकाता (700 001) के कार्यालय में या साउथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495001 (छत्तीसगढ़) के कार्यालय में किया जा सकता है ।

टिप्पण 2. : उक्त अधिनियम की धारा 8 के उपबंधों की ओर ध्यान आकृष्ट किया जाता है जिसमें निम्नलिखित उपबंध हैं :—

अर्जन के बाबत आपत्तियाँ :—

“8(1) कोई व्यक्ति जो किसी भूमि में जिसकी बाबत धारा 7 के अधीन अधिसूचना निकाली गई है, हितबद्ध है अधिसूचना के निकाले जाने से तीस दिन के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकेगा ।

स्पष्टीकरण :

(1) इस धारा के अन्तर्गत यह आपत्ति नहीं मानी जाएगी कि कोई व्यक्ति किसी भूमि में कोयला उत्पादन के लिए स्वयं खनन सक्रियाएं करना चाहता है और ऐसी सक्रियाएं केन्द्रीय सरकार या किसी अन्य व्यक्ति को नहीं करनी चाहिए ।

(2) उप-धारा (1) के अधीन प्रत्येक आपत्ति सक्षम अधिकारी को लिखित रूप में की जाएगी और सक्षम अधिकारी, आपत्तिकर्ता को या तो स्वयं सुने जाने या विधि व्यवसायी द्वारा सुनवाई का अवसर देगा और ऐसी सभी आपत्तियों को सुनने के पश्चात् और ऐसी अतिरिक्त जांच यदि कोई हो, करने के पश्चात्, जो वह आवश्यक समझे, वह या तो धारा 7 की उप-धारा (1) के अधीन अधिसूचित भूमि का या ऐसी भूमि में या उस पर के अधिकारों के संबंध में एक रिपोर्ट या ऐसी भूमि के विभिन्न टुकड़ों या ऐसी भूमि में या उस पर के अधिकारों के संबंध में विभिन्न रिपोर्टों आपत्तियों पर अपनी सिफारिशों समेत और उसके द्वारा की गई कार्यवाही के अभिलेख सहित केन्द्रीय सरकार को उसके विनिश्चय के लिए देगा ।

(3) इस धारा के प्रयोजनों के लिए वह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होगा, यदि इस अधिनियम के अधीन भूमि या किसी ऐसी भूमि में या उस पर के अधिकार अर्जित कर लिए जाते हैं।”

टिप्पण 3 : केन्द्रीय सरकार कोयला नियंत्रक, 1, कार्डसिल हाउस स्ट्रीट, कोलकाता-700001 को उक्त अधिनियम की धारा 3 के अधीन अधिसूचना संख्यांक का. आ. 905 तारीख 20 मार्च, 1987 जो भारत के राजपत्र भाग II, खण्ड 3, खण्ड (ii) में 4 अप्रैल, 1987 को प्रकाशित की गई थी द्वारा सक्षम प्राधिकारी नियुक्त किया है।

अनुसूची

करताली ब्लॉक, अम्बिका ओपनकास्ट, कोरबा क्षेत्र

जिला-कोरबा (छत्तीसगढ़)

[रेखांक संख्यांक एसईसीएल/बीएसपी/सीजीएम(पीएलजी)/भूमि/372, दिनांक 15 जनवरी, 2010]

सभी अधिकारः—

(क) राजस्व भूमि :

क्रम सं.	ग्राम का नाम	पटवारी हल्का संख्या	ग्राम संख्यांक	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणी
1.	करताली	10	78	पाली	कोरबा	135.580	भाग
2.	तेंदूभाठा	10	77	पाली	कोरबा	0.045	भाग
3.	दमियां	09	76	पाली	कोरबा	0.024	भाग
कुल क्षेत्र : 135.649 हेक्टर (लगभग) या 335.19 एकड़ (लगभग)							

(ख) राजस्व वन भूमि :

क्रम सं.	ग्राम का नाम	पटवारी हल्का संख्या	ग्राम संख्यांक	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पण
1.	करताली	10	78	पाली	कोरबा	1.963	भाग
2.	तेंदूभाठा	10	77	पाली	कोरबा	0.081	भाग
3.	दमियां	09	76	पाली	कोरबा	4.237	भाग
कुल क्षेत्र: 6.281 हेक्टर (लगभग) या 15.52 एकड़ (लगभग)							

कुल योग (क+ख): 141.930 हेक्टर (लगभग)

या 350.71 एकड़ (लगभग)

1. ग्राम करताली (भाग) में अर्जित किए जाने वाले प्लॉट संख्या : 1 भाग, 7 भाग, 8 भाग, 9 भाग, 25 भाग, 26 भाग, 145 भाग, 150 भाग, 151 से 196, 197 भाग, 373, 423 भाग, 424 भाग, 426 भाग, 427 भाग, 454/1 भाग, 465 भाग, 466 से 470, 471 भाग, 493 भाग, 494 भाग, 495 से 509, 511 से 562, 563 भाग, 570 भाग, 571 से 591, 593 से 599, 603 भाग, 604 से 619, 620 भाग, 621 से 631, 635 भाग, 637 भाग, 638 से 641, 642 भाग, 643, भाग, 644 से 648, 649 भाग।

2. ग्राम तेंदूभाठा (भाग) में अर्जित किए जाने वाले प्लॉट संख्या : 104 भाग, 106 भाग

3. ग्राम दमियां (भाग) में अर्जित किए जाने वाले प्लॉट संख्या : 1/1 भाग, 104/1 भाग, 166 भाग, 222 भाग, 223 भाग

सीमा वर्णन :

क-ख : रेखा ग्राम करताली के बिन्दु 'क' से आरंभ होती है और प्लॉट संख्या 373 की पूर्वी सीमा से होकर 563 से गुजरकर 571 की उत्तरी सीमा से होकर 570, 197 से गुजरकर 177, 176 की उत्तरी सीमा से होकर और 197 से गुजरकर बिन्दु 'ख' पर मिलती है।

ख-ग : रेखा प्लॉट संख्या 150, 145, 649, 643, 642 668, 637 से गुजरकर बिन्दु 'ग' पर मिलती है।

ग-घ : रेखा प्लॉट संख्या 631, 630 की दक्षिण सीमा से होकर 635, 603, 620 से गुजरकर 621, 619 की दक्षिणी सीमा से होकर 603 से गुजरकर 604, 599, 596, 595, 594, 593, 588, 589, 591, 511 की दक्षिणी सीमा से होकर बिन्दु 'घ' पर मिलती है।

घ-ङ : रेखा प्लॉट संख्या 511, 512 की पश्चिमी सीमा से होकर, ग्राम करताली और ग्राम डोगनाला के सम्मिलित सीमा से होकर 504 की पश्चिमी सीमा से होकर 465, 471, 494 से गुजरकर 495 की उत्तरी सीमा से होकर बिन्दु 'ङ' पर मिलती है।

ङ-च : रेखा ग्राम करताली के प्लॉट संख्या 493, 471, 454/1, 426, 427, 424, 25, 423, 9, 7, 8, 1 ग्राम तेंदूभाठा के 106, 104 और ग्राम दमिया के 222, 223 से गुजरकर 198, 197 की उत्तरी सीमा से होकर 166, 104/1, 1/1 से गुजरकर बिन्दु 'च' पर मिलती है।

च-क : रेखा ग्राम दमिया के प्लॉट संख्या 1/1, 104/1, 166, 223, 222, ग्राम तेंदूभाठा के 104, 106 और ग्राम करताली के 1, 8, 9, 25, 26, 423 से गुजरकर 25 की उत्तरी सीमा से होकर 424, 427, 426,, 454/1, 471, 493 से गुजरकर 373 की उत्तरी सीमा से होकर आरंभिक बिन्दु 'क' पर मिलती है।

[क. सं. 43015/10/2000 पी. एच. आई डब्ल्यू-1]

एम. शाहाबुद्दीन अवर सचिव

MINISTRY OF COAL

New Delhi, the 5th May, 2010

S.O. 1237.—Whereas, by the notification of the Government of India in the Ministry of Coal number S.O. 1996 dated the 15th July, 2009 issued under sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India, Part-II, Section 3, Sub-section (ii) dated the 25th July, 2009, the Central Government gave notice of its intention to prospect for coal in 145.00 hectares (approximately) or 358.29 acres (approximately) of the lands in the locality specified in the schedule annexed to that notification; .

And whereas the Central Government is satisfied that coal is obtainable in part of the said lands;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the land measuring 141.930 hectares (approximately) or 350.71 acres (approximately) with all rights in or over the said lands described in Schedule appended hereto; .

Note 1 : The plan bearing number SECL/BSP/C.G.M.(PLG)/LAND/ 372 dated the 15th January, 2010 of the area covered by this notification may be inspected at the office of the Collector, Korba, Chhattisgarh or at the office of the Coal Controller, 1, Council House Street, Kolkata - 700001 or at the office of the South Eastern Coalfields Limited, Revenue Section, Seepat Road, Bilaspur-495006 Chhattisgarh.

Note 2 : Attention is hereby invited to the provisions of Section 8 of the said Act which provides as follows:-

Objection to Acquisition.

“8(1) Any person interested in any land in respect of which a notification under Section 7 has been issued may, within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or any rights in or over such land.

Explanation.

- (1) It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operations in the land for the production of coal and that such operations should not be undertaken by the Central Government or by any other person.
- (2) Every objection under sub-section (1) shall be made to the competent authority in writing, and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of Section 7 or of rights in or over such land, or make different reports in respect of different parcels of such land or of rights in or over such land, to the Central Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of the Government.
- (3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act.”

Note : 3. The Coal Controller, 1, Council House Street, Kolkata-700001, has been appointed by the Central Government as the competent authority under section 3 of the said Act, notification number S.O. 905, dated the 20th March, 1987, published in part II, section 3, sub-section (ii) of the Gazette of India, dated the 4th April 1987.

SCHEDULE**KarTali ALIBBLOCK, AMBIKA OPENCAST, Korba Area****District Korba (Chhattisgarh)**

Plan number SECL/BSP/CGM(PLG)/ LAND/372 dated 15th January, 2010).

All Rights:

(A) Revenue Land :

Sl. No.	Name of Village	Patwari halka Number	Village Number	Tahsil	District	Area in Hectares	Remarks
1.	Kartali	10	78	Pali	Korba	135.580	Part
2.	Tendubhata	10	77	Pali	Korba	0.045	Part
3.	Damiya	09	76	Pali	Korba	0.024	Part

Total :- 135.649 hectares (approximately) or 335.19 acres (approximately)

(B) Revenue Forest Land

Sl. No.	Name of Village	Patwari halka Number	Village Number	Tahsil	District	Area in Hectares	Remarks
1.	Kartali	10	78	Pali	Korba	1.963	Part
2.	Tendubhata	10	77	Pali	Korba	0.081	Part
3.	Damiya	09	76	Pali	Korba	4.237	Part

Total :- 6.281 hectares (approximately) or 15.52 acres (approximately)

Grand Total (A+B):- 141.930 hectares (approximately)

or 350.71 acres (approximately)

- Plot numbers to be acquired in village Kartali (Part): 1 P, 7P, 8P, 9P, 25P, 26P, 145P, 150P, 151 to 196, 197P, 373, 423P, 424P, 426P, 427P, 454/1P, 465P, 466 to 470, 471 P, 493P, 494P, 495 to 509, 511 to 562, 563P, 570P, 571 to 591, 593 to 599; 603P, 604 to 619, 620P, 621 to 631, 635P, 637P, 638 to 641, 642P, 643P, 644 to 648, 649P.
- Plot numbers to be acquired in village Tendubhata (Part): 104P, 106P.
- Plot numbers to be acquired in Village Damiya (Part): 1/1 P, 104/1 P, 166P, 222P, 223 P.

Boundary Description:

- A—B** Line starts from point “A” in village Kartali and passes along eastern boundry of plot no. 373, through 563, northern boundary of 571, through 570, 197, northern boundary of 177, 176, through 197 and meets at point ‘B’.
- B—C** Line passes through plot no. 150, 145, 649, 643, 642, 668, 637 and meets at point ‘C’.
- C—D** Line passes along southern boundary of plot no. 631, 630, through 635, 603, 620, southern boundary of 621, 619, through 603, southern boundary of 604, 599, 596, 595, 594, 593, 588, 589, 591, 511 and meets at point ‘D’.
- D—E** Line passes along western boundary of plot no. 511, 512, common village boundary of Kartali and Dongnala, western boundary of 504, through 465, 471, 494, along northern boundary of 495 and meets at point ‘E’.
- E—F** Line passes in village Kartali through plot no. 493, 471, 454/1, 426, 427, 424, 25, 423, 9, 7, 8, 1, village Tendubhata 106, 104, village Damiya 222, 223, along northern boundary of 198, 197, through 166, 104/1, 1/1 and meets at point ‘F’.
- F—A** Line passes in village Damiya through plot no. 1/1, 104/1, 166, 223, 222, village Tendubhata 104, 106, village Kartali 1, 8, 9; 25, 26, 423, northern boundary of 25, through 424, 427, 426, 454/1, 471, 493, northern boundary of 373 and meets at starting point “A”.

[No. 43015/10/2009-PRIW-1]

M. SHAHABUDEEN, Under Secy.

नई दिल्ली, 5 मई, 2010

का. आ. 1238.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) के अधीन भारत के राजपत्र भाग-II, खंड-3, उप-खण्ड (ii) तारीख 25 जुलाई, 2009 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 1999 तारीख 16 जुलाई 2009 द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में जिसका माप 207.00 हेक्टर (लगभग) या 511.50 एकड़ (लगभग) है, कोयले का पूर्वोक्षण करने के अपने आशय की सूचना दी थी;

और केन्द्रीय सरकार का यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि के भाग में कोयला अभिप्राप्य है;

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इससे संलग्न अनुसूची में वर्णित 207.00 हेक्टेयर (लगभग) या 511.50 एकड़ (लगभग) माप की भूमि और उक्त भूमि में या उस पर के सभी अधिकार का अर्जन करने के अपने आशय की सूचना देती है ;

टिप्पणी 1. : इस अधिसूचना के अन्तर्गत आने वाले क्षेत्र के रेखांक सं. राजस्व /62/2010 तारीख 15 फरवरी, 2010 का निरीक्षण कलेक्टर, सिंगरौली मध्य प्रदेश के कार्यालय में या नार्दर्न कोलीफील्ड्स लिमिटेड, राजस्व अनुभाग, सिंगरौली, मध्य प्रदेश-486889 के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता (700 001) के कार्यालय में किया जा सकता है।

टिप्पणी 2. : उक्त अधिनियम की धारा 8 के उपबंधों की और ध्यान आकृष्ट किया जाता है जिसमें निम्नलिखित उपबंध हैं :-

अर्जन के बाबत आपत्तियाँ :-

“8(1) कोई व्यक्ति जो किसी भूमि में जिसकी बाबत धारा 7 के अधीन अधिसूचना निकाली गई है, हितबद्ध है अधिसूचना के निकाले जाने से तीस दिन के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकेगा।

स्पष्टीकरण :-

(1) इस धारा के अर्थान्तर्गत यह आपत्ति नहीं मानी जाएगी कि कोई व्यक्ति किसी भूमि में कोयला उत्पादन के लिए स्वयं खनन संक्रियाएं करना चाहता है और ऐसी संक्रियाएं केन्द्रीय सरकार या किसी अन्य व्यक्ति को नहीं करनी चाहिए।

(2) उप-धारा (1) के अधीन प्रत्येक आपत्ति सक्षम प्राधिकारी को लिखित रूप में की जाएगी और सक्षम प्राधिकारी, आपत्तिकर्ता को स्वयं सुने जाने का या विधि व्यवसायी द्वारा सुनवाई का अवसर देगा और ऐसी सभी आपत्तियों को सुनने के पश्चात् और ऐसी अतिरिक्त जांच यदि कोई हो, करने के पश्चात्, जो वह आवश्यक समझता है, वह या तो धारा 7 की उप-धारा (1) के अधीन अधिसूचित भूमि के या ऐसी भूमि में या उस पर के अधिकारों के संबंध में एक रिपोर्ट या ऐसी भूमि के विभिन्न टुकड़ों या ऐसी भूमि में या उस पर के अधिकारों के संबंध में आपत्तियों पर अपनी सिफारिशों और उसके द्वारा की गई कार्यवाही के अभिलेख सहित विभिन्न रिपोर्ट केन्द्रीय सरकार को उसके विनिश्चय के लिए देगा।

(3) इस धारा के प्रयोजनों के लिए वह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होता। यदि भूमि या किसी ऐसी भूमि में या इस पर के अधिकार इस अधिनियम के अधीन अर्जित कर लिए जाते हैं।”

टिप्पणी 3. : केन्द्रीय सरकार ने कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता-700 001 को उक्त अधिनियम की धारा 3 के अधीन भारत के राजपत्र में अधिसूचना संख्यांक 43022/12/87-सी.ए. (ii) तारीख 5 अक्टूबर, 1987 को पृष्ठ 3587 से 3591 द्वारा सक्षम प्राधिकारी नियुक्त किया है।

अनुसूची

दुधौचुआ ब्लॉक विस्तार-II (कोल माइनिंग ब्लॉक)

नार्दर्न कोलफील्ड्स लिमिटेड, सिंगरौली

जिला-सिंगरौली (मध्य प्रदेश)

रेखांक संख्या राजस्व/62/10, तारीख 15 फरवरी, 2010

(अर्जित की जाने वाली ग्राम-वार-प्लॉट-वार भूमि दर्शाते हुए)

(सभी अधिकार)

क्रम संख्या	ग्राम	थाना	ग्राम संख्या	तहसील	जिला	क्षेत्रफल (हेक्टेयर में)	क्षेत्रफल (एकड़ में)	टिप्पणी
1.	मेढौली	मोरवा	131	सिंगरौली	सिंगरौली	87.001	214.98	भाग
2.	पंजरेह (पिजरेह)	मोरवा	140	सिंगरौली	सिंगरौली	81.999	202.62	भाग
3.	चटका	मोरवा	135	सिंगरौली	सिंगरौली	35.006	86.50	भाग
4.	झिगुरदा	मोरवा	137	सिंगरौली	सिंगरौली	2.994	7.40	भाग
कुल क्षेत्र : 207.00 (लगभग) 511.50 (लगभग)								

1. ग्राम मेढौली में अर्जित किए जाने वाले प्लॉट संख्यांक :

402 (भाग), 403, 404, 405 (भाग), 410 (भाग), 411 (भाग), 412 (भाग), 513 (भाग), 514 (भाग), 522 (भाग), 523 (भाग), और 414 /603 (भाग)

2. ग्राम पंजरेह (पिजरेह) में अर्जित किए जाने वाले प्लॉट संख्यांक :

172 (भाग), 186 (भाग), 188 (भाग), 189 (भाग), 190 (भाग), 193 (भाग), 194 (भाग), 195, 196, 197, 198/1 (भाग), 198/2, 198/3, 198/4, 199 और 200

3. ग्राम चटका में अर्जित किए जाने वाले प्लॉट संख्यांक :

53 (भाग), 54 (भाग), 55 (भाग), 56 (भाग), 58 (भाग) और 53/59 (भाग),

4. ग्राम झिगुरदा में अर्जित किए जाने वाले प्लॉट संख्यांक :

4.3 (भाग), और 404 (भाग)

सीमा वर्णन :

क-ख : रेखा बिन्दु 'क' से आरम्भ होती है और ग्राम मेढौली के प्लॉट संख्या 410, 411 से और जयन्त ब्लाक विस्तार (सब ब्लाक-V) की पूर्व अर्जित सीमा पर से होकर गुजरती है तथा प्लॉट संख्या 411 और 406 की सम्मिलित सीमा के बिन्दु 'ख' पर मिलती है।

ख-ग : रेखा बिन्दु 'ख' से आरम्भ होती है और ग्राम मेढौली के प्लॉट संख्या 411 और 406 की सम्मिलित सीमा प्लॉट संख्या 404 और 405 की सम्मिलित सीमा और दुधोचुआ ब्लाक विस्तार की पूर्व अर्जित सीमा पर से होकर गुजरती है तथा बिन्दु "ग" पर मिलती है।

ग-घ : रेखा बिन्दु "ग" से आरम्भ होती है और ग्राम मेढौली के प्लॉट संख्या 405, 513, 523 और 522 से होकर और दुधोचुआ ब्लाक विस्तार की पूर्व अर्जित सीमा पर से होकर गुजरती है तथा बिन्दु "घ" पर मिलती है।

घ-ङ : रेखा बिन्दु "घ" से आरम्भ होती है और ग्राम मेढौली के प्लॉट संख्या 522, 513 और 514 से होकर और दुधोचुआ ब्लाक-I की पूर्व अर्जित सीमा पर से होकर गुजरती है तथा ग्राम मेढौली और ग्राम पंजरेह (पिजरेह) की सम्मिलित सीमा के बिन्दु "ङ" पर मिलती है।

ङ-च : रेखा बिन्दु "ङ" से आरम्भ होती है और ग्राम मेढौली-पंजरेह (पिजरेह), मेढौली-चटका, करवारी-चटका और करवारी-झिगुरदा की सम्मिलित सीमा पर से और दुधोचुआ ब्लाक-I की पूर्व अर्जित (उपरोक्त वर्णित सम्मिलित ग्राम सीमा और अर्जित खान सीमा बिन्दु "ङ" और "च" के बीच है) सीमा पर से होकर गुजरती है तथा बिन्दु "च" पर मिलती है।

च-छ : रेखा बिन्दु "च" से आरम्भ होती है और ग्राम झिगुरदा के प्लॉट संख्या 404 एवं 403 से होकर तथा ग्राम चटका के प्लॉट संख्या 58 से होकर गुजरती है तथा बिन्दु "छ" पर मिलती है।

- छ-ज ' रेखा बिन्दु "छ" से आरम्भ होती है और ग्राम चटका के प्लाट संख्या 58, 55, 56, 54, 53, 53/59 से होकर और ग्राम पंजरेह (पिजरेह) के प्लाट संख्या 186, 198/1 से होकर गुजरती है तथा प्लाट संख्या 198/1 और 188 की सम्मिलित सीमा के बिन्दु "ज" पर मिलती है।
- ज-झ - रेखा बिन्दु "ज" से आरम्भ होती है और ग्राम पंजरेह (पिजरेह) के प्लाट संख्या 188, 189, 190, 193 और 172 से होकर गुजरती है तथा बिन्दु "झ" पर मिलती है।
- झ-क : रेखा बिन्दु "झ" से आरम्भ होती है और ग्राम पंजरेह (पिजरेह) के प्लाट संख्या 172 एवं 194 से होकर तथा ग्राम मेढौली के प्लाट संख्या 402, 412, 414/603, पुनः 412 और 410 से होकर गुजरती है तथा आरम्भिक बिन्दु "क" पर मिलती है।

[फा. सं. 43015/15/2009-पी आर आई डब्ल्यू-1]

एम. शहाबुद्दीन, अवर सचिव

New Delhi, the 5th May, 2010

S.O. 1238.—Whereas, by the notification of the Government of India in the Ministry of Coal number S.O. 1999 dated the 16th July, 2009, issued under sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India, Part-II, Section -3, Sub-section (ii), dated the 25th July, 2009 the Central Government gave notice of its intention to prospect for coal in 207.00 Hectares (approximately) or 511.50 acres (approximately) of the lands in the locality specified in the Schedule annexed to that notification.

And, whereas the Central Government is satisfied that coal is obtainable in a part of the said lands prescribed in the Schedule appended to this notification.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the land measuring 207.00 Hectares (approximately) or 511.50 Acres (approximately) and all rights in or over the said lands, described in the Schedule appended hereto.

Note: 1 The plan bearing number REV/62/10 dated the 15th February, 2010 of the area covered by this notification may be inspected at the Office of the Collector, Singrauli, Madhya Pradesh or at the Office of the Northern Coalfields Limited, Revenue Section, Singrauli, Madhya Pradesh - 486 889 or at the Office of the Coal Controller, I, Council House Street, Kolkata - 700 001

Note: 2 Attention is hereby invited to the provisions of the Section 8 of the said Act which provides as follows :—

Objection to acquisition:

" 8 (1) Any person interested in any land in respect of which a notification under Section 7 has been issued, may, within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or of any rights in or over such land.

Explanation—

- (1) It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operations in the land for the production of coal and that such operations should not be undertaken by the Central Government or any other person.
- (2) Every objection under sub-section (1) shall be made to the competent authority in writing, and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of Section 7 or of rights in or over such land; or make different reports in respect of different parcels of such land or of rights in or over such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government.
- (3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act."

Note: 3. The Coal Controller, I, Council House Street, Kolkata -700001, has been appointed by the Central Government as the competent authority under section 3 of the said Act by notification number 43022/12/87 -CA (ii) dated the 5th October, 1987 published in the Gazette of India, dated, the 17th October, 1987 at page 3587 to 3591.

SCHEDULE

Dudhichua Block Extension-II (Coal Mining Block)

Northern Coalfields Limited, Singrauli

Dist: Singrauli (Madhya Pradesh)

Plan bearing number REV/62/10 dated the 15th February, 2010

(Showing Village-wise-plot-wise land to be acquired)

All Rights :

Sl. No.	Mouza Village	Police Thana	Village No.	Tehsil	District	Area (in hectares)	Area (in acres)	Remarks
1	Medhauri	Morwa	131	Singrauli	Singrauli	87.001	214.98	Part
2	Panjreh (Pijreh)	-do-	140	-do-	-do-	81.999	201.62	Part
3	Chatka	-do-	135	-do-	-do-	35.006	86.50	Part
4	Jhingurda	-do-	137	-do-	-do-	2.994	7.40	Part
Total Area						207.00	511.50	

(approximately) (approximately)

(1) Plot numbers to be acquired in village Medhauri:

402 (P), 403, 404, 405 (P), 410 (P), 411 (P), 412 (P), 513 (P), 514 (P), 522 (P), 523 (P), and 414/603 (P).

(2) Plot numbers to be acquired in village Panjreh (Pijreh) :

172 (P), 186 (P), 188 (P), 189 (P), 190 (P), 193 (P), 194 (P), 195, 196, 197, 198/1 (P), 198/2, 198/3, 198/4, 199 and 200.

(3) Plot numbers to be acquired in village Chatka:

53 (P), 54 (P), 55 (P), 56 (P), 58 (P) and 53/59 (P).

(4) Plot numbers to be acquired in village Jhingurda:

403 (P) and 404 (P).

Boundary Description:.

- A-B: The line starts from point "A" and passes through Plot Nos. 410, 411 of village Medhauri and passes over the previously acquired boundary of Jayant Block Extension (Sub Block-V) and meets on common plot boundary of Plot No. 411 and 406 at point "B".
- B-C: Line starts from point "B" and passes through common plot boundary of plot Nos. 411 and 406 and common plot boundary of Plot Nos. 404 and 405 of village Medhauri and passes over the previously acquired boundary of Dudhichua Block Extension and meets at point "C".
- C-D: Line starts from point "C" and passes through plot Nos. 405, 513, 523 and 522 of village Medhauri and passes over the previously acquired boundary of Dudhichua Block Extension and meets at point "D".
- D-E: Line starts from point "D" and passes through plot Nos. 522, 513 and 514 of village Medhauri and passes over the previously acquired boundary of Dudhichua Block-I and meets on common village boundary of village Medhauri - Panjreh (Pijreh) at point "E".
- E-F: Line starts from point "E" and passes over common village boundaries of Medhauri-Panjreh (Pijreh), Medhauri—Chatka, Karwari—Chatka and Karwari—Jhingurda, and the same line passes over the previously acquired

boundary of Dudhichua Block-I (the common village boundary of above mentioned and the acquired mine boundary are the same between point "E" and "F" and meets at point "F".

- F-G: Line starts "from point "F" and passes through plot Nos. 404 and 403 of village Jhingurda and plot No. 58 of village-Chatka and meets at point "G".
- G-H: Line starts from. point "G" and passes through plot nos. 58, 55, 56, 54, 53 and 53/59 of village Chatka and plot Nos. 186 and 198/1 of village Panjreh (Pijreh) and meets on common plot boundary of plot No. 198/1 and 188 at point "H".
- H-I: Line starts from point "H" and passes through plot Nos. 188, 189, 190, 193 and 172 of village Panjreh (Pijreh) and meets at point "I".
- I-A: Line starts from point "I" and passes through plot Nos. 172 and 194 of village, Panjreh (Pijreh) and plot Nos. 402, 412, 414/603 and again 412 & 410 of village Medhauli and meets at the starting point "A".

[F. No. 43015/15/2009- PRIW-I]

M. SHAHABUDEEN, Under Secy.

नई दिल्ली, 12 मई, 2010

का. आ. 1239.—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में कोयला अभिप्राप्त किए जाने की संभावना है।

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस भूमि में कोयले का पूर्वक्षण करने के अपने आशय की सूचना देती है।

इस अधिसूचना के अन्तर्गत आने वाले क्षेत्र की रेखांक सं. एसईसीएल/बीएसपी/जीएम (पीएलजी)/भूमि/362 तारीख 24 नवम्बर, 2009 का निरीक्षण जिला कलेक्टर, शहडोल (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक 1, काउंसिल हाऊस स्ट्रीट, कोलकाता-700 001 के कार्यालय में या साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है।

इस अधिसूचना के अन्तर्गत आने वाली भूमि में हितबद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उप-धारा (7) में निर्दिष्ट सभी नक्शों, चार्टों और अन्य दस्तावेजों की इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर भारसाधक अधिकारी या विभागाध्यक्ष (राजस्व अनुभाग), साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, बिलासपुर-495006 छत्तीसगढ़ को भेजेंगे।

अनुसूची

रूंगटा पैच (बकहो-झग्राहा पैच), सोहागपुर क्षेत्र

जिला शहडोल (मध्य प्रदेश)

[रेखांक संख्या एसईसीएल/बीएसपी/जीएमइ(पीएलजी)/भूमि/362, तारीख 24 नवम्बर, 2009 :

क्रम सं.	ग्राम का नाम	बंदोबस्त संख्या	पटवारी हल्का संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पण
1.	बकहो	630	103	सोहागपुर	शहडोल	41.875	भाग
2.	झग्राहा	369	103	सोहागपुर	शहडोल	10.489	भाग
कुल क्षेत्र : 52.364 हेक्टर (लगभग)							या 130.06 एकड़ (लगभग)

सीमा वर्णन :

क—ख : रेखा ग्राम झग्राहा—साबो के सम्मिलित सीमा में बिन्दु "क" से आरंभ होती है और ग्राम झग्राहा—साबो की सम्मिलित सीमा से गुजरती हुई बिन्दु "ख" पर मिलती है।

- ख—ग : रेखा ग्राम बकहो के पश्चिमी भाग से होती हुई अधिग्रहित भूमि की सीमा में बिन्दु "ग" पर मिलती है।
 ग—घ : रेखा ग्राम बकहो की अधिग्रहित भूमि की सीमा से होती हुई बिन्दु "घ" पर मिलती है।
 घ—ङ : रेखा ग्राम बकहो से होती हुई ग्राम बकहो—झग्राहा की सम्मिलित सीमा में बिन्दु "ङ" पर मिलती है।
 ङ—क : रेखा ग्राम झग्राहा के उत्तरी भाग से होती हुई आरंभिक बिन्दु "क" पर मिलती है।

[फा. सं. 43015/38/2009—पी आर आई डब्ल्यू-1]

एम. शहाबुद्दीन, अवर सचिव

New Delhi, the 12th May, 2010

S.O. 1239.—Whereas it appears to the Central Government that Coal is likely to be obtained from the lands in the locality mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal therein;

The plan bearing Number SECL/ BSP/ GM (PLG)/ Land/ 362 dated the 24th November, 2009 of the area covered by this notification can be inspected at the Office of the District Collector, Shahdol (Madhya Pradesh) or at the Office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the Office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495 006, Chhattisgarh.

All persons interested in the land covered by this notification shall deliver all maps, charts and other documents referred to in sub-section (7) of Section 13 of the said Act to the Officer- In - Charge or Head of the Department (Revenue Section), South Eastern Coalfields Limited, Seepat Road, Bilaspur - 495 006, Chhattisgarh, within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE**Rungta Patch (Bakho- Jhagraha Patch), Sohagpur Area****District—Shahdol, Madhya Pradesh**

Plan bearing number SECL/BSP/GM (PLG)/Land/ 362 dated the 24th November, 2009.

Sl. No.	Name of Village	Bandobast Number	Patwari Halka Number	Tehsil	District	Area in Hectares	Remarks
1.	Bakho	630	103	Sohagpur	Shahdol	41.875	Part
2.	Jhagraha	369	103	Sohagpur	Shahdol	10.489	Part

Total:-52.364 hectares (approximately.)
or 130.06 acres approximately.)

BOUNDARY DESCRIPTION:

- A—B:** Line starts from point 'A' on the common boundary of villages Jhagraha—Sabo and passes along the common boundary of villages Jhagraha—Sabo and meets at point 'B'.
B—C: Line passes through western part of village Bakho, and meets at point 'C' on the boundary of acquired land.
C—D: Line passes in village Bakho along the boundary of acquired land and meets at point 'D'.
D—E: Line passes through village Bakho and meets at point 'E' on the common boundary of villages Bakho - Jhagraha.
E—A: Line passes through northern part of village Jhagraha and meets at starting point 'A'.

[F. No. 43015/38/2009- PRIW-I]
M. SHAHABUDEEN, Under Secy.

भ्रम एवं रोजगार मंत्रालय

नई दिल्ली, 12 अप्रैल, 2010

का. आ. 1240.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल.आई.सी. ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 98/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-4-2010 को प्राप्त हुआ था।

[सं. एल-17012/18/95-आई आर(बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 12th April, 2010

S. O. 1240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 98/1996) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between employees in relation to the management of L.I.C. of India and their workman, which was received by the Central Government on 9-4-2010.

[No. L-17012/18/95-IR(B-II)]

U.S. PANDEY, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No. I. D. No. 98/1996

Sh. Bhagwan Singh
S/o Sh. Dana Ram,
Hanuman Dhani,
Bhiwani (Haryana)

...Applicant

Versus

The Senior Divisional Manager,
LIC, Model Town,
Karnal

...Respondent

APPEARANCES

For the workman : Sh. Ramesh Hooda, Advocate

For the Management : Sh. Pawan Longia, Advocate

AWARD

Passed on 5-4-10

Government of India vide Notification No. L-17012/18/95-IR(B-II) Dated 1-10-96, by exercising its powers under Section 10 of the Industrial Disputes Act, 1947 (hereinafter

referred as the Act), referred the following Industrial dispute for adjudication of this Tribunal :—

“Whether the action of the management of LIC of India in dismissing the services of Shri Bhagwan Singh ex-peon is legal and justified? If not, what relief the workman is entitled to?”

Parties were informed after receiving the reference. Parties appeared and filed their respective pleadings. The workman has challenged his dismissal order passed by the Management of LIC on the grounds that it is bad in law. He was not afforded the proper opportunity of being heard. The work for which he was dismissed from the service was not within his powers. He was a category IV employee and category IV employee was not empowered to make entries in the Ledger Book. Opportunity of being heard was not given to him. Inquiry Officer has given perverse findings. Complainant was not examined by the Inquiry Officer. There was no evidence and it was a case of no evidence before the Inquiry Officer. On the other hand, the Management contended contrarily. It was contended by the Management that proper opportunity of being heard was given to him. Complainant appeared before the Inquiry Officer, but he could not be cross-examined because the same was won over by the workman. Rest of evidence was available on record and it was sufficient to prove the misconduct of the workman.

As per the pleadings of the parties workman was working as a category IV employee in LIC of India, Bhiwani Branch. He allegedly entered fictitious entries in Premium Ledgers relating to Policy No. 50419471 on the life of one Shri Ram Niwas. The workman collected the premium, but did not deposited the same in LIC Office and to prevent his misconduct fabricated entries were entered in Premium Ledger by him. He was given a Charge-sheet and according to the rules inquiry was conducted.

Both of the parties were afforded the opportunity of being heard and adducing evidence. The workman filed the affidavit and he was cross-examined by the learned counsel for the Management. Likewise, one Shri Dev Raj filed the affidavit on behalf of the Management of LIC and he was cross-examined by learned counsel for the workman.

Parties were heard at length along with their counsel. Written arguments were also filed. I have perused written arguments and other materials on record. During arguments the workman has denied of making entries. During inquiry proceedings, he has also denied of making entries. But in his pleadings in para no. 3 last five lines and in para no. 4 and six, he has specifically admitted that he made entries in the Premium Ledgers as per law. In one para he says that he was authorized by the Branch Manager, whereas, in another para he justified making the entries in Premium Ledgers on the basis of circumstances shown in para. In his cross-examination, he again disputed making of entries

in Premium Ledgers. In his affidavit and statement of claims, he has admitted of making entries but in cross examination he denied the same.

Apart from the admission the Inquiry Officer also examined one Shri S.K. Sharma, Handwriting Expert, who was cross-examined at length by the workman during departmental proceedings. Shri Sharma opined the entries made by the workman.

Regarding the statement of complainant Shri Ram Niwas, it is before this Tribunal that Shri Ram Niwas once appeared before the Inquiry Officer. His chief examination was recorded but on that date his cross-examination could not be recorded. On the request of the workman, adjournment was given and on the next date and thereafter, the complainant could not turn up. The examination-in-chief has no relevancy unless the complainant Shri Ram Niwas is not subjected to examination by the workman. But before this Tribunal, workman in his cross-examination has admitted that a complaint was made by Shri Ram Niwas against him. He has also identified the complainant from the records of the office. Thus, where the workman has admitted before the Tribunal about making a complaint in writing by Shri Ram Niwas, the fact of making complaint is proved. A complaint was lodged against the workman. He was issued the charge sheet. He denied the charge-sheet by filing detailed representation. Dissatisfying with the representation, the disciplinary authority appointed the Inquiry Officer to conduct an inquiry according to law. Inquiry Officer afforded all possible opportunities to the workman during inquiry proceedings. After affording all possible opportunities, the disciplinary authority awarded the punishment of dismissal from service. The workman filed an appeal and after hearing the workman, the appellate authority also dismissed the appeal.

This Tribunal has certain limitations. This Tribunal cannot act as the appellate authority of the Inquiry Officer and disciplinary authority. This Tribunal has only the jurisdiction to look any perversity. It is established beyond doubt that workman received the premium from Shri Ram Niwas, did not deposit the same and to conceal his misconduct, he fabricated entries in Premium Ledger of Policy No.50419479 of Shri Ram Niwas. He has admitted in his statement of claim that he made certain entries in Premium Ledger. On few occasions he denied making some entries but the witnesses, which were examined and cross-examined before the Inquiry Officer proved it beyond shadow of doubt that he was the workman who has made entries.

It is also contended by the workman that merely making entries in Premium Ledger his conduct is not proved. But on perusal of the entire materials on record including the inquiry file, it is also proved that this amount, which was said to be received by the workman from Shri Ram

Niwas was not deposited and entered into the documents of the LIC. On the other hand fabricated entries were made in Premium Ledger and two dates on which the fictitious entries were made were on Sundays. It is unexplained by the workman that if he has made certain entries in Premium Ledger, how it happened to be on Sundays? Thus, I am of the view that misconduct of receiving premiums from Shri Ram Niwas and not depositing the same in the office was established. It was also established that to conceal this act, the workman made certain fictitious entries in the Premium Ledger. Thus, the Inquiry Officer has rightly given the report proving the charge of misconduct against the workman. The workman has misappropriated the amount of premium of a member of Indian society affecting the trust of the people at large in the governmental organization. In such case, the trust of the organization in the workman is bound to be affected and lose. Under such circumstances, I am of the view that disciplinary authority has rightly awarded the punishment of dismissal of service, which is proportionate to the committed misconduct. There is no occasion for this Tribunal to interfere in the findings of the Inquiry Officer and proceedings conducted by the disciplinary authority and the appellate authority. The reference is accordingly, answered. Let Central Government be approached for publication of Award, and thereafter, file be consigned to record room.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2010

का. आ. 1241.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नई दिल्ली के पंचाट (संदर्भ संख्या 23/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-4-2010 को प्राप्त हुआ था।

[सं. एल-12012/48/2005-आई आर(बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 12th April, 2010

S. O. 1241.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2005) of the Central Government Industrial Tribunal/Labour Court, New Delhi now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 9-4-2010.

[No. L-12012/48/2005-IR(B-II)]

U. S. PANDEY, Desk Officer

ANNEXURE**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO.1, KARKARDOOMA COURTS
COMPLEX DELHI****I. D. No. 23/2005**

Pradeep Gupta S/o Shri G. R. Gupta
A-3/40-41, Second Floor,
Sector-11, Rohini,
Delhi-85

...Workman

Versus

Management of Syndicate Bank
Through G. M., Delhi Zonal Office,
Sarojini House, 6,
Bhagwan Dass Road,
New Delhi-110001

...Management

AWARD

A clerk working at East Patel Nagar branch of Syndicate Bank resorted to heavy outside borrowing from various credit societies, beyond his repaying capacity. He fabricated document, purported to have been issued by one Ashok Kumar on behalf of the bank, and obtained loan from one of the credit societies. He availed loans from various credit societies aggregating to Rs. 4,55,000, while his carry home salary was Rs. 4000 p.m. He also availed a demand loan of Rs. 1,42,000 and S.O.D. limit of Rs. 1,02,000 from the bank, without disclosing his outside liabilities, in the loan application. When he could not repay the amounts, so borrowed, creditors lodged complaints to the bank in that regard. When these facts came to light, a charge sheet was served upon him on 19-12-2002. An Enquiry Officer was appointed to enquire into the allegations. He conducted the enquiry and submitted his report dated 17-3-03. The disciplinary authority passed an order of compulsory retirement on 22-8-03. Pradeep Gupta appealed against the said order and his appeal came to be dismissed on 12-12-03. Demand notice dated 12-2-04 was sent, which was replied by the bank, vide letter dated 5-3-04. A dispute was raised before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-12012/48/2005-IR(B-II) New Delhi, dated 27-7-2005, with following terms:

“Whether the action of the management of Syndicate Bank in terminating the services of their workman Shri Pradeep Gupta by way of compulsory retirement w.e.f. 16-7-02 is just, fair & legal? If not then to what relief the workman is entitled to and from which date?”

2. Claim statement was filed by the workman pleading that he became member of a co-operative group housing society for obtaining a flat. Since the society had

revised costs of its flats, he could not get house loan sanctioned in time, for certain formalities were to be completed. Being hard-pressed, he opted to take loan from other sources. His brother and brother-in-law assured him of financial assistance. However, they could not give money for him in time. There was some time lag between the demand raised by the society and repayment to be made to the credit societies. Consequently, he arranged loans from Credit societies. When he could not make payment to credit societies in time, one of the credit societies, managed by one Shri R. K. Ranga, wrote to the bank to deduct pending installments from his salary. When bank asked the society to furnish authorization, the society submitted a photocopy of alleged authorization letter. The bank called for his explanation. Being not satisfied with his explanation, a departmental enquiry was ordered. Shankar Lal was appointed as Enquiry Officer. The Enquiry Officer had not entertained his request for supply of relevant documents. Original of alleged forged document was not summoned by the Enquiry Officer. The forged document, which was produced before the Enquiry Officer, was a copy attested with a copy and not with the original. Non production of the original document resulted into violation of principles of natural justice. The Enquiry Officer had not accorded full opportunity to defend himself. His report is based on extraneous consideration, which is contrary to record and perverse. The Disciplinary Authority had accepted the report of the Enquiry Officer, without considering the fact that original document, which was alleged to have been forged, was not produced by the credit society. Unblemished service record of the workman was not considered by the Disciplinary Authority. Punishment of compulsory retirement was not proportionate to his misconduct, committed if any. He preferred an appeal against the punishment order and the Appellate Authority had dismissed his appeal, recording a finding that he has obtained loan from the credit societies, disregarding the bank's written rules. These findings are beyond the charges levelled against him. The Appellate Authority had gone wrong, when it ignored service record of the workman. Excessive punishment was awarded to him. He claims that punishment of compulsory retirement is disproportionate to his misconduct. He claims reinstatement in service with continuity and full back wages.

3. Management contests the claim, pleading that the workman availed loan from various credit societies beyond his repaying capacity. When he could not pay loans, so obtained, creditors wrote to the bank, which fact led to unavoidable controversies and tarnished fair image of the bank. In obtaining loan, dubious means were adopted by the workman and he fabricated documents purported to have been issued by the bank official under the seal of the bank. He availed loans from credit societies aggregating to Rs.455000, while his carry home salary was Rs.4000 per month. He availed demand loan of Rs. 1,42,000 and S.O.D.

limit of Rs. 1,020,00 from the bank, without disclosing his outside liabilities. His explanation was sought, which was found not be satisfactory. Departmental enquiry was conducted in accordance with the principles of natural justice. Enquiry Officer supplied documents and gave him opportunity to cross examine the witnesses and to defend himself. Enquiry Officer submitted his report concluding that the charges were proved against him. Copy of the enquiry report was given to him and he made submissions on that report. The Disciplinary Authority gave personal hearing to the workman. Punishment of compulsory retirement was awarded, considering gravity of his misconduct. Appellate Authority was also of the view that his appeal could not bring extenuating factors over the record. Consequently his appeal was dismissed. The workman had not denied, in his reply, that he had borrowed money beyond his repaying capacity, that too in disregard to the guidelines of the bank. He submitted documents before the credit society, knowing well that it was one of the pre-requisite to produce undertaking with seal and signature of the bank official to the society for sanction of loan. Original of the forged document was seen by the officer investigating the matter. The workman concealed his outside borrowings, when he availed loan from the bank. It has been claimed that the enquiry was in consonance with the principles of natural justice and findings of the Enquiry Officer was in accordance with the evidence. The Disciplinary Authority considered the record and passed reasoned and appropriate punishment. The Appellate Authority could not find a grain of substance in his appeal. The workman, committed grave misconduct and the bank lost confidence in him. He is, not entitled to reinstatement with full back wages and continuity of service.

4. On pleadings of the parties, the following issues were settled :—

- (i) Whether the enquiry conducted by the management was not just, fair and proper ?
- (ii) Whether compulsory retirement of the workman w.e.f. 13-7-02 was just, fair and legal ?
- (iii) Relief.

5. Issue No.1 was treated as preliminary issue. Shri Shankar Lal, Senior Manager, was examined on that issue by the management. He was cross examined in detail on behalf of the workman. Workman examined himself in support of his claim. He too was cross examined on behalf of the management. No other witness was examined by either of the parties.

6. Arguments were heard at the bar. Shri Bharat Bhushan, authorised representative, advanced arguments on behalf of the workman. Shri Rajesh Mahendru, authorised representative, advanced arguments on behalf of the management. Written submissions were also filed by the parties.

7. Preliminary issue was answered in favour of the management and against the workman vide order dated 11-9-2009.

8. None came forward on behalf of the workman to advance arguments on proportionality of punishment. Shri Rajesh Mahendru, authorized representative, raised his submissions on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and carefully perused the record. My finding on the issues referred by the appropriate Government for adjudication are as follows:

9. As per facts projected over the record the workman availed loans from various credit societies, beyond his repaying capacity. He could not pay loans availed by him. When creditors wrote to the bank, it led to unavailable controversies. In obtaining loan the claimant adopted dubious means, such as he fabricated documents purported to have been issued by the bank official, under the seal of the bank. He availed loans aggregating to Rs. 4,55,000, while his carry home salary was Rs.4000 p.m. Besides the above loans obtained from various credit societies, he availed demand loan of Rs. 1,42,000 and S.O.D. limit of Rs. 1,02,000 from the bank, without disclosing the factum of his outside liabilities. Thus it is evident that the claimant not only concealed facts from his employer, while obtaining loan of Rs. 1,42,000 and S.O.D. limit of Rs. 1,02,000 he fabricated documents and used it as genuine in obtaining loans from credit societies. Therefore, it is evident that he defrauded the bank as well as credit societies in obtaining loans from them. He acted in dishonest manner. His conduct was fraudulent, when aforesaid loans were obtained by him. Acts of dishonesty or fraud constitute grave misconduct, on the part of an employee holding responsible position. As highlighted by the bank in its evidence, the claimant not only availed loans by dubious means but could not repay it, since those loans were beyond his repaying capacity. Credit societies wrote to the bank for recovery of those loans. Fair image of the bank was lowered down by those acts of the claimant. Therefore, his acts were of grave nature to earn severe punishment.

10. Right of an employer to inflict punishment is not unfettered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of Section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in *Bengal Bhatdee Coal Company* [1963 (1) LLJ 291] that where order of

punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice, which would vitiate order of dismissal or discharge. But by enacting the provisions of Section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge, or dismissal.

11. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Ltd. [1965 (1) LLJ 462]. Likewise in Management of the Federation of Indian Chambers of Commerce and Industry [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In Ram Kishan [1996 (1) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts".

12. In B.M. Patil [1996 (11) LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a

robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence regarding the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

13. After insertion of Section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer is commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab. I.C.817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial, wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, Section 11-A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts, and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

14. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Further more, the Tribunal has to consider whether

the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference cannot be made to the precedent in Bhagirath Mal Rainwa [1995 (1) LLJ 960].

15. Now I would turn to the facts of the present controversy, in order to assess as to whether punishment awarded to Shri Pradeep Gupta commensurate to his misconduct. As emerge out of the record, the claimant has rendered about 20 years service with the bank. By award of punishment of compulsory retirement, his retiral benefits were accorded to him. Question for consideration comes as to whether such an employee should be retained in service. The claimant was expected to promote his employer's interest by honest discharge of his duties. Instead of promoting interest of his employer, he committed acts of serious nature which led to tarnish the image of the bank. Such an employee cannot be called to be an asset. He was a liability of the nature, which not only disrupts fair image but causes grave concern to the employer. One who has to maintain standards of honesty and fidelity, does not have a right to remain in the job, when he puts the reputation and name of his employer to stake. Therefore, considering gravity of the misconduct committed by the claimant, I am of the considered view that the punishment awarded commensurate with his misconduct. No lesser punishment is warranted to justify inference with the punishment that was awarded to the claimant. Punishment of compulsory retirement is just, fair and legal.

16. In view of the reasons detailed above, this Tribunal does not find any ground to interfere with the punishment of compulsory retirement awarded to the claimant. He is not entitled to any relief. An award is accordingly passed. It be sent to the appropriate Government for publication.

Dated : 26-3-2010

DR. R. K. YADAV, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2010

का. आ. 1242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में, केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कानपुर के संघट (संदर्भ संख्या 181/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-4-2010 को प्राप्त हुआ था।

[सं. एल-12012/392/97-आई आर(बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 12th April, 2010

S. O. 1242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 181/98) of the Central Government Industrial Tribunal/Labour Court Kanpur now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 9-04-2010.

[No. L-12012/392/97-IR(B-II)]

U.S. PANDEY, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, KANPUR

I. D. No. 181 of 98

Between—

Union Bank Staff Association
Secretary UBI Staff Association
c/o Union Bank of India,
24/53 Birhana Road,
Kanpur

AND

Union Bank of India
Assistant General Manager,
Union Bank of India,
Pandu Nagar, Kanpur

AWARD

1. Central Government MOL, New Delhi, vide its notification No. L-12012/392/97/IR (B-II) dated 20-10-98 has referred the following dispute for adjudication to this tribunal.

2. Whether the demand raised by the Union Bank Staff Association Kanpur (UP) for appointment of Sh. Madhukar Pandey as computer operator with effect from 7-9-98 and payment of special allowance /conveyance allowance is legal and justified? If so what relief the concerned workman is entitled to?

3. Claimant has filed his statement of claim through Sri P. N. Shukla praying that the order of the opposite management appointing Sri Madhukar Pandey as ad-hoc computer operator vide order dated 3-9-96 be set aside. It is also prayed that special allowance for the post of computer operator at the rate of Rs.410 per month with effect from 3-9-96 to 30-11-98 amounting to Rs.17402.40 paisa along with interest be also paid.

4. It is alleged that and admitted fact of both the parties that according to circulars of the bank there is a provisions for appointment on ad-hoc basis as computer

operator and paying an allowance of special allowance of Rs. 410/- per month and other allowances on that special pay till the post is filled on a regular basis from amongst the senior most workers. As there is no provision in the bank for appointment on ad-hoc basis therefore, there is no rule for making payment as special allowance in the prevalent rules of the banking service. It is alleged and admitted that there was a post of computer operator at banks extension counter situate at IIT Kanpur which is a branch of Kanpur Nagar. This post was to be filled up on ad-hoc basis till regular appointment. It is also admitted fact that as per circulars of the Bank Sri Madhukar Pandey being the senior most worker was to be appointed on ad-hoc basis on the post of computer operator. But the Assistant General Manager of the bank knowingly and malafide making a breach of Desai Award posted Sri Pandey on ad-hoc basis at the extension counter so that he was deprived conveyance charges. Claimant has moved an application dated 7-2-96 to the management making a prayer that he is willing to join on the post of computer operator on ad-hoc basis at IIT Extension Counter if the management is willing to pay him the conveyance allowance but the management did not pass any order on his representation and informed Sri Pandey. In this way opposite party appointed another worker Sri M P PI and others who were junior to him on the post of computer operator in different branches. It is alleged that later on the management provided conveyance allowance to other persons who were appointed on ad-hoc basis therefore, they have adopted unfair labour practice.

5. Opposite party has filed written reply. It is stated by them that the post of computer operator are required to be filled on the basis of aptitude test etc. To cope up with the working till regular selection there is a provision for ad-hoc computer operator from amongst senior most eligible staff from clerical staff on the basis of station wise seniority. Sri Pandey was posted as computer operator on ad-hoc basis at IIT Extension Counter, Kanpur, vide order dated 3-9-96 and was also offered special allowance for Rs.410/- per month on ad hoc basis, but he did not accept to work on ad hoc basis and thus refused the offer made. However, he conditionally offered to go to IIT Extension Counter only on temporary basis along with benefits like conveyance charges etc. The contents and demand was wrong regarding conveyance charges it is submitted that IIT Extension Counter is a part of the main branch that is Kanpur Main Branch and there is no provision nor claimed for any conveyance allowance in any part of the parent branch. This was the position which was existing was duly known to the union and the claimant and there was no valid reason for refusing the ad hoc posting nor for putting any conditional offer. On his refusal on ad hoc basis as computer operator, the next person entitled was duly given the chance and were posted at different areas at Kanpur. Sri M. P. Pal was posted at IIT Extension Counter Kanpur.

No right or entitlement of anyone was ever adversely affected by the management. The order issued to Sri Pal nowhere states that he is entitled to payment of conveyance charges etc. Therefore, management has not done anything which is against law or any statutory provisions of Desai or Sashty Award. The facts presented by the claimant are misconceived. Other allegations have been denied and prayed for rejection of the claim statement.

6. Claimant has filed the rejoinder reiterating his own aversions and contradicting the aversions made by the opposite party.

7. Both the parties have filed documentary as well as oral evidence.

8. Claimant has filed 11 documents vide list 8/1. The documents are Ext. W-1 to Ext. W9.

9. Opposite party has filed four documents vide list 10/1.

10. Claimant has adduced Sri Madhukar Pandey as a witness W.W.I. Opposite party has adduced Sri Rajesh Pandey who is the Manager in the regional office as M.W.1.

11. I have heard the arguments and perused the record.

12. It is contended by the opposite party that there is a provision to fill up the post of computer operator on ad-hoc basis from amongst the senior most worker till regular appointment is made vide circular No.4058 dated 3-3-94 and it is also argued that to cope up the working stop gap arrangement is made. I fully agree with the management and there is no force in the contention of the claimant that there is no provision for ad hoc appointment of the post of computer operator. Though there may not be this type of provision in Shastri Award etc. but considering the viability and the working in the modern era, bank has to modernize its working therefore there is nothing illegal in this circular. Whatever is to be granted that is also mentioned in the circular. An employee will be given Rs.410/- per month as a special allowance. M.W.1 stated that the claimant was offered appointment vide letter Ext.W-1 dated 3-9-96 filed by the claimant but Sri Pandey made a conditional offer stating that since there is no provision of appointment on ad-hoc basis in the bank neither in bipartite settlement nor banks computer operator promotion policy. I think this was wrong observation. At least was not proper observation done by the claimant. Management has to do the work and whatever the problems comes the management knows better. It is expected from the employees that they will co-operate in the working of the bank. Again he raised a conditional offer that even then he is ready to go to IIT Extension Counter branch if the banks will depute him only on temporary basis along with the due benefits like conveyance charges etc. Opposite party has specifically stated that there was no such provision in the circular to provide conveyance charges etc. at that time. It is stated

by them that extension counter IIT Kanpur is the part of the main branch and workers were not entitled for conveyance charges. Claimant tried to put something new that he was not working in the main branch at the time of issuance of the letter but he was working in Regional Office Kanpur. This fact has not been corroborated by the claimant in his oral evidence. He did not disclose in the statement where was he working. In the cross-examination he specifically admitted that as there is no provision for ad-hoc appointment in the service conditions of the bank so he did not accept the appointment on ad-hoc basis. I think there should not have been any grievance to the claimant when he was specifically refusing to be appointed on ad-hoc basis. He again admitted in the cross that if he would have been paid the conveyance allowances even then he would not have joined on such post, it being on ad-hoc basis. Considering this type of evidence I find that the union or the claimant had made a futile exercise by making reference. In this way the opposite party has not committed any unfair practice.

13. Therefore, considering the facts and circumstances claimant is not entitled to any relief. Opposite party has not omitted any breach of circular or the terms of service condition. Claim is therefore, decided against the claimant and in favour of the opposite party.

Dated : 29-3-2010

RAM PARKASH, Presiding Officer

नई दिल्ली, 12 अप्रैल, 2010

का. आ. 1243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स स्पाइस जेट लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 55/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-4-2010 को प्राप्त हुआ था।

[सं. एल-11012/30/2006-आई आर(सी-1)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 12th April, 2010

S. O. 1243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 55/2006) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Spice Jet Ltd. and their workman, which was received by the Central Government on 12-04-2010.

[No. L-11012/30/2006-IR(C-I)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT NO. 1, NEW
DELHI KARKARDOOMA COURTS COMPLEX
DELHI**

I. D. No. 55/2006

Shri Tirathram S/o Shri Ganeshi Lal,
C/o Piyare Lal Srivastava,
Bhartiya Mazdoor Union (Regd.),
CB-280, Ring Road, Naraina,
New Delhi-110028

...Workman

Versus

Spicejet Ltd.,
Cargo Complex, IGI Airport
Terminal-I, New Delhi-37.

...Management

AWARD

Shri Tirathram was working in Modiluft Ltd., which became scheduled Air Transport Service on 20-11-94, when air transport service permit was issued to it by Director General of Civil Aviation. It was functioning with the support of technical know-how being provided by M/s. Lufthansa. In the year 1996 agreement between Modiluft Ltd. and M/s. Lufthansa was terminated and Director General of Civil Aviation did not renew its permit to operate scheduled air transport service after 19-11-96. Till 23-5-05 airline operations of Modiluft Ltd. were not in existence. On account of ceasure of airline operations, services of Shri Shiv Kumar Mishra came to an end.

2. An industrial dispute was raised by Suresh Kumar before the Conciliation Officer. Conciliation proceedings failed. Appropriate Government vide its Order No. L-11012/30/2006-IR(CM-I) dated 28-8-2006 has referred the dispute to this Tribunal for adjudication with following terms of reference:

“Whether the action of the Management of Modiluft/Royal Airways/Spice Jet Ltd., in terminating the services of Sh. Tirath Ram S/o Shri Ganeshi Lal w.e.f. 1-11-02 is just, fair and legal? If not, to what relief the concerned workman entitled and from which date?”

3. Shri Tirathram was instructed by the appropriate Government to file a claim statement, with relevant documents before this Tribunal within 15 days from the receipt of reference order. The aforesaid reference was made by the appropriate Government on 28-8-06. The workman opted not to file a claim statement before this Tribunal, in pursuance of the directions given by the appropriate Government.

4. When claim statement was not filed by the workman, in pursuance of directions issued by the appropriate Government, notice was sent to him for filing

claim statement. On 21-11-06 Shri Ravinder Singh appeared on behalf of the workman and sought time to file claim statement. Matter was adjourned to 25-1-07. Thereafter several opportunities were given, but claim statement was not filed. From 28th January, 2008 till April, 2009, there was no Presiding Officer in the Tribunal.

5. A registered notice was sent for 30-6-09 to file claim statement. It was to be served on the workman through Shri P.L. Srivastava, r/o CB 280 Ring Road, Naraina, New Delhi, which address was provided by the appropriate Government in the order of reference. On this very address notice was sent. It was received back with the report that no such person with the name of Shri Tirathram was residing at the given address. Consequently it became evident that the workman has left the given address for good. He opted not to inform this Tribunal about change of his residential address. Under these circumstances claim statement could not reach this Tribunal, from the workman.

6. The management filed its reply to the term of reference pleading that when airline operations came to an end on 19-11-96, workman ceased to be in the employment of Modiluft. Ltd.. Airline business was not done by the management till 23-5-05, the date when airline operations commenced again. It has been claimed that since the company was in operative between 96 to May, 2005, there was no question of employing/terminating the services of the workman in the year 2001-2002. Airline operations were relaunched by the company with the name of the Spice Jet Limited on 23-5-05, after issue of new permit by the Director General, Civil Aviation on 17-5-05. Spice Jet Limited came into existence w.e.f. 23-5-2005, consequent to the change in the name of the management. It has been projected that under these circumstances, there is no substance in the proposition that services of Shri Tirathram were dispensed w.e.f. 1-11-2002. Since services of Shri Tirathram came to an end on 19-11-96, when permit to operate scheduled air transport service was not renewed by the Director General Civil Aviation, in that situation it cannot be said that his services were dispensed with on 1-1-2002. To substantiate their stand, the management filed copy of permit dated 20-11-94, its renewal dated 17-11-95, copy of resolution dated 28-2-2001, photo copy of news item appearing in Economic Times issue dated 3-1-2001, photo copy of permit to operate Scheduled Air Transport Services (Passenger) dated 9-5-06, copy of news letter of Spice Jet and copy of fresh certificate of incorporation, consequent upon change of name, Documents referred above, lands support to the facts pleaded by the management.

7. As the workman opted not to file claim statement and management projected that this services came to an end on 19-11-96 when permit to operate Scheduled Air Transport Service was not renewed by the Director General, Civil Aviation, it came to light that the reference made by the Oppropriate Government was mechanical, without

application of any mind. Justifiability lies in the action of the management in dispensing with the services of Tirathram on 19-11-96, on account of non renewal of permit to operate Scheduled Air Transport Services. Under these circumstances the workman is not entitled to any relief. The reference is answered accordingly. It be sent to the appropriate Government for publication.

Dated : 30-6-2009

DR. R. K. YADAV, Presiding Officer
नई दिल्ली, 16 अप्रैल, 2010

का. आ. 1244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन एयरलाइन्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 21/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-11012/16/1993-आई आर(सी-1)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S. O. 1244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/1996) of the Central Government Industrial Tribunal/Labour Court No. 2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Airlines and their workman, which was received by the Central Government on 16-04-2010.

[No. L-11012/16/1993-IR(C-I)]
AJAY KUMAR GAUR, Desk Officer
ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT NO. II,
KARKARDOOMA DELHI 110032**

I. D. No. 21/1996

Dated 19-2-10

In the matter of dispute between :

All India Aircraft Engineers Association
(Represented through its General Secretary)
9 P. K. Guha Road, Dum Dum,
Calcutta 700028

...Workman

Versus

Indian Airlines,
Airlines House,
Gurudwara Rakab Ganj Road,
New Delhi 110001

...Management

AWARD

The Central Government, Ministry of Labour vide Order No. L-11012/16/93-IR(M)/(Coal-I) dated 15-11-95/21-2-96 has referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the Aircraft Maintenance Engineers of the Indian Airlines Ltd. to pay them salary and remunerations for the period 7-11-89 to 6-12-89 both days inclusive is justified? If so, to what relief the workmen are entitled?”

2. The statement of claim was filed by the workmen in July 1996. Written statement to the same was filed by the management on 22-8-96. Thereafter, the case was fixed for recording of the evidence. Vide order dated 18-02-2008, the case was transferred from CGIT-cum-LC-I to CGIT-cum-LC-II. None is present from the side of the workmen in this Court for a long time. The reference otherwise was also for salary and remuneration for a period of one month only, i.e. from 7-11-89 to 6-12-89. It appears that the workmen are no longer interested in the outcome of this reference.

Under these circumstances, there is no way out except to pass a no-dispute award in this case. Accordingly, a no-dispute award is passed in this case and reference I.D. No. 21/1996 sent by the Central Government vide order No. L-11012/16/93-IR(M)/(Coal-I) dated 15-11-95/21-2-96 stands disposed of accordingly. Parties will bear their own cost.

Dated: 19-02-2010

SATNAM SINGH, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का. आ. 1245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-I, धनबाद के पंचाट (संदर्भ संख्या 90/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-20012/242/89-आई आर(सी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S. O. 1245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.90/90) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C.L., and their workmen, which was received by the Central Government on 16-4-2010.

[F. No. L-20012/242/89-IR(C-I)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD.

In the matter of a reference U/S. 10 (1) (d)/(2A) of the Industrial Disputes Act, 1947

Reference No. 90 of 1990

Parties : Employers in relation to the management of Pootki Balihari Project of M/s. BCCL.

AND

Their Workmen.

Present : Shri H. M. Singh, Presiding Officer.

APPEARANCES

For the Employers	: Sh. D. K. Verma, Advocate.
For the Workmen	: Shri. D. Mukherjee, Advocate.
State	: Jharkhand
Industry	: Coal.

Dated, Dhanbad, the 5th April, 2010

AWARD

By Order No. L-20012(242)/89-IR (Coal-I) dated 19-4-1990 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the demand of the Dhanbad Colliery Karamchari Sangh that S/Shri Subhash Modak, Manoj Kumar, Nibas Modak, Rajesh Kumar, Balram, Potu Modak, Ganesh Modak, Arun Kumar Choudhary and Jagarnath Modak employed in Pootki Balihari Project of M/s. Bharat Coking Coal Ltd., be treated as departmental workers and paid wages as per NCWA-III is justified ? If so, to what relief the concerned workmen are entitled ?”

2. Written statement has been filed on behalf of the concerned workmen stating that the concerned workmen have been working in Pootki Balihari Project Area Canteen since July, 1986, in the capacities mentioned against the name of each workman :

1. Subhash Modak	—	Canteen Manager.
2. Manoj Kumar	—	Salesman.
3. Nibas Modak	—	Service Boy.
4. Rajesh Kumar	—	Service Boy.
5. Balram	—	Cook.

6. Potu Modak	—	Cook.
7. Ganesh Modak	—	Mazdoor.
8. Arun Kumar Choudhary	—	Mazdoor.
9. Jagarnath Modak	—	Mazdoor.

The Canteen is situated in BCCL building provided by the management to cater to the needs of the staff and officials of the Area Office. The payment is made by BCCL to meet the expenses and for materials required. However payment of salaries to the workers of the Canteen is paid through the Manager, Subhash Modak. The Canteen is run on the basis of no profit and loss and the price of different items of Menu are paid by the management accordingly. It has been stated that under the provisions of Mines Rules 64, 65, 66, 67, 68, 69, 70 and 71 the management is required to maintain a Canteen for the workers and to provide for staff and other things for proper running of the Canteen and it is statutory duty and obligation on the part of the management and hence the workmen working in a Canteen are to be treated as regular and whole time workers of the management. As per Mines Rules also the management is also liable to provide and maintain Canteen under Clause 8.9.1 Chapter VIII of NCWA-III which provides as under :—

“8.9.1: The management agreed that during the Agreement period there would be a Canteen in each of the Colleries/establishments and the same would not be run by contractors, utensils and fuel required in the Canteen will be supplied by the colliery management. The management will also give certain amount to the Canteen Managing Committee depending upon the size and operation of the Canteen, to enable the Canteens to supply food articles of cheaper prices.”

As per NCWA-III, which is a settlement, the management is bound to employ regular workers in the Canteen and as such these workmen who have been working in the Canteen since long should be treated as regular employees under BCCL. It has been stated that the demand of the workmen/union to treat the concerned workmen as departmental workmen/employees as quite legal and justified.

It has been prayed that the Hon'ble Tribunal be pleased to pass an award by directing the management to regularise the concerned workmen as departmental workmen/employees since they have been working in the canteen and also direct the management to pay them arrear of wages and other emoluments as per NCWA-III.

3. The written statement has been filed by the management stating therein that the Area Office of Pootki Balihari Project was situated near Kendwadih Colliery and the Canteen of the area Office was being operated by a contractor named Binod Modak. For temporary period

Subhash Modak was given a shed for a temporary period at the proposed site of Area Office Pootki Balihari Project to open a tea shop for supplying tea to the persons working in the construction job of temporary nature. The management supplied him fuel, coal and electricity and Sri Modak opened up a tea shop. He employed two persons and paid them their wages. He purchased raw materials required for preparation of tea and some food stuff and carried on his business. The contractor's workman previously working at the Canteen of Area Office demanded for their regularisation as workman of the canteen and they raised an industrial dispute through the union, D.C.K.S. The Hon'ble Tribunal passed Award in Ref. No. 105/87 holding that the concerned workmen are entitled to be regularised as canteen workmen of the Area Office. It has been submitted that there is one Canteen in the Area Office and the management can hardly employ 5 to 6 workmen in the Canteen. There is already an award for employing the workman engaged in Canteen at the previous location of the Area Office. Therefore they have been employed in the Canteen of the Area Offices after shifting. In such a situation Subhash Modak and his servants and relatives cannot claim for their employment under the management. It has been submitted that Subhash Modak was given a shed, free coal and electricity to establish a temporary tea shop within the premises of the Area Office for a temporary period only and it was a permanent contract. The workmen previously working the canteen of the Area Officer are senior to the concerned persons and the award has already been passed in their favour to provide them employment. Therefore, the concerned workmen are not entitled to be regularised as Canteen workmen of the Area Office.

It has been prayed that the Hon'ble Tribunal be pleased to pass an award holding that the demand of the concerned workmen for their departmentalisation is not justified and they are not entitled to any relief.

4. Both the parties have filed their respective rejoinder admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The management has produced MW-1, Abhayanand pathak and MW-2, Krishna Mohan Prasad.

The concerned workman has produced MW-1, Subhash Modak, who has proved documents as Exts. W-1 to W7.

6. Main argument advanced on behalf of the concerned workmen is that they have been working in the canteen of Pootkee Balihari Project since July, 1986 and they are the employees of the management. The management is bound to run canteen under the statutory provision of Sec. 46 of the Factories Act which provides for running of canteen by the management and that should be departmental canteen and they have to supply Utensils, coal/fuel etc. It has been argued that the workmen

are working since long time but they have not been regularised.

In this respect the management representative argued that the canteen is run by the concerned workman and his five workmen. They (management) have given only building to run the canteen for benefit of the employees of the management as well as other to get tea by sale. It has been argued that some canteen employees have been regularised by an award dated 28-7-89 passed by Central Government Industrial Tribunal No. 2, Dhanbad and the management cannot regularise the concerned workmen in some place as canteen workers.

It has been argued on behalf of the concerned workman that in the present canteen the concerned workmen are working at Pootkee Balihari Area Canteen since July, 1986 and the management is the owner and also supply coal etc. to run the canteen. In this respect management's witness MW-1, A.N.Pathak admitted in cross-examination that the management is the owner of the canteen building, coal and power are supplied by the management. He also stated that under law the company is bound to maintain a canteen and as per law management is bound to run canteen. It has also been argued that the Constitution Bench of the Hon'ble Supreme Court in a case reported in LLN2001 (4) page 135- *Steel Authority of India Ltd. Vs. National Union Water Front Workers and Others* case held in para 107 that the management is bound to regularise the canteen workers wherein discharge of a statutory obligation the management is maintaining the canteen. It has been argued that the above view has been held by the Hon'ble Supreme Court regarding canteen reported in 2003 (99) FLR page 5 and also in 2003 (99) FLR page 8, 2008 LLR page 509 and also judgement of Calcutta High Court reported in 2008 AIR SCW page 3996 and also judgement of Calcutta High Court in 2007 (225) FLR page 23 and 2007 (116) FLR page 427.

7. It has also been argued that under NCWA-IV, clause 8.9 the management is legally bound to run a canteen. Clause 8.9 of NCWA-IV provides that there will be a canteen in each of the collieries/establishments and the same will not be run by contractors. Utensils and fuel required in the canteen will be supplied by the colliery management. The management will give certain amount to the canteen managing Committees depending upon the size and operation of the canteen to enable the canteens to supply food articles at cheaper prices.

8. The case referred by the workmen SCLJ Vol-X page 21- *Saraspur Mills Co. Ltd. Vs. Ramanlal Chamanlal* in which Hon'ble Supreme Court held that under Sec. 46 of Factories Act, 1948- Canteen workers employed by co-operative society are employees of the company within the meaning of Bombay Industrial Relations Act, 1946.

In 2001 LLR 961 the Hon'ble Supreme Court held that when the principal employer is to comply with statutory

liability to maintain canteen in a factory/establishment. On abolition of such contract labour- The contract workers are to be absorbed as regular employees. And also referred cases-1984(3) SCC 16: 1997 LLR 228 (SC): 1981(2) SCR 79: (3) SCC 248: 2001 (2) SC 376: 1988(3) SCC 105: 1990 LLR 598 (SC): 1992 LLR 46 (SC): 1997 (7) SCC 59: 2000(7) SCC 109: 1995 (5) SCC 27: 1978 (4) SCC 267: 1995 SCC 402: 1991 LLR 307 (SC): (3) SCC 152: 1994 LLR 634 (SC): 2001 LLR 101 (SC).

9. In the case reported in 2003 (99) FLR 8 in which Hon'ble Supreme Court laid down that the canteen maintained by the management through contractor-engaged by contractors - supervised by Deputy Manager Administration and his subordinates - management has mandatory duty and obligation to provide and maintain a canteen- They would be treated as workers of the company itself because the management is liable to maintain canteen under sec.46 of the Factories Act, 1948 which has been reported in (2001) 1 SCC 298 and also reported in (2001) 7 SCC 1, 1999 (83) FLR 75 (SC): 2000 (85) FLR 672 (SC): 2001 (91) FLR 182 (SC): 2001 (88) FLR 548 (SC): 1973 (26) FLR 298 (SC).

10. Another judgement reported in 2008 LLR 509 in which Hon'ble Supreme Court laid down that the canteen in the establishment of the management is a statutory canteen run by the contractor but ultimate control and supervision has been by the company. It shows that they are the employees of the management because the ultimate control of the management on the canteen employees and the company has committed unfair labour practice. 2003(99) FLR 5 (SC) in which Hon'ble Supreme Court laid down- Appellants indisputably are obliged to run canteen in their establishments on account of obligation cast upon them under mandatory provision of Factories Act, 1948 and Rules- workers in canteen would be treated as workers of Company. AIR 1987 Supreme Court 777 also referred by workman regarding employment of catering cleaners in Hon'ble Supreme Court laid down after abolition of contract Labour (Regulation & Abolition) Act employment in catering cleaners by Southern Railway through contractors- Government directed to take appropriate action- Southern Railway restrained from employing contract labour.

2007 LLR 1029 in which Hon'ble Calcutta High Court laid down - "Canteen run by the appellant Bank through canteen committees set up by the Bank. Totality of facts and circumstances taken together show that the Bank had full control in running of the canteen- Bank provided financial support in running of the canteen. By providing free electricity, Kerosene and accommodation to run the canteen- which offered items to canteen employees at subsidised rates. Rightly held by the Single Judge that employees of Canteen were entitled to be treated as regular employees of the Bank."

Cases have also been referred by Hon'ble Calcutta High Court- 1996 (73) FLR 963 (SC): 1998 (78) FLR 389 (SC): 1999 LLR 961 (SC): 2000 (85) FLR 672 (SC): 2000 (85) FLR 653 (SC): 2004 (101) FLR 137 (SC): 2006 (109) FLR 18 (SC): 2006 (109) FLR 18 (SC): 2006 (109) FLR 86: 2008 (109) FLR 86 (SC): 2006 (111) FLR 400 (SC).

In 2008 AIR SCW 3996 Hon'ble Supreme Court laid down that Uma Devi's case in conformity with Article 14 of the Constitution and cannot be read it in a manner which will make it in conflict with Article 14. The Constitution is the Supreme law of the land and, any judgement, not even of the Supreme Court, can violate the Constitution. The Hon'ble Supreme Court also laid down- wording of reference showing that dispute was as to regularisation of service of contractual workers—pleadings however showing that core issue before Tribunal was with regard to status of workers as employees of principal employer-Award of Tribunal holding workers to be employees of principal employer and granting relief of regularisation. Hon'ble Supreme Court referred- 207 AIR SCW 4944: 2007 Lab. I.C. 3209: 2007 AIR SCW 6904: 2006 AIR SCW 212: AIR 2006 SC 845: 2006 AIR SCW 1235: AIR 2006 SC 3499: 2006 AIR SCW 4250: AIR 2006 SC 2936: 2006 Lab. I. C 3531: 2006 AIR SCW 5994: 2007 (I) ALJ 505: 2006 AIR SCW 6414: 2007 Lab. I.C 590: 2004 AIR SCW 5457: AIR 2004 SC 4778: 2003 AIR SCW 4727: AIR 2003 SC 3529: 2002 AIR SCW 4939: AIR 2004 SC 511: 2001 AIR SCW 3574: AIR 2001 SC 3427: 1997 AIR SCW 3033: AIR 1997 SC 3002: 1994 AIR SCW 2460: AIR 1984 SC 1467 AIR 1967 SC 469.

11. Regarding argument of the management that they are running canteen and they have employed workman as par award passed by Central Govt. Industrial Tribunal No. 2, Dhanbad in Reference No. 105 of 1987. The present workers are workmen of another canteen. In this respect evidence of Management's witness MW-1, A.N.Pathak is very much material. He has stated in cross-examination at page 2 that earlier Pootkee Colliery and Balihari Colliery were part of Bhagaband Area. Bhagaband Area was subsequently re-organised as Pootkee Balihari Area MW-2, K.M. Prasad stated in cross-examination at page 2 that the canteen then running at Bhagaband Area Office was about two and half K.M. away from the structure in which the present canteen is running. It shows that Bhagaband Colliery Area Office is about two and half K.M. away from the structure in which this present canteen is running in the building of the management as per evidence of MW-1 who has stated that presently the management is not maintaining any canteen and coal and power are supplied to these workmen by the management MW-2 has also stated that there is official canteen. There is one Tea stall run by Subhash Modak. This statement of the witness shows that Reference No. 105/87 has got no concern with the present workers concerned because that is run in another place and that is two and half K.M. away from the present canteen which is run in the

building of the management by the concerned workmen since 1986.

Papers which have been filed by the concerned workmen show that Ext. W-1 is photographs of the concerned nine persons and Ext. W-2 shows that coal is issued by the management for canteen and as per Ext. W-3 coal has been issued to run the canteen and as per Ext. W-4 materials are supplied by the management to the canteen. There are number of papers which show that the management supply to the canteen items from time to time and also canteen supply to the management articles prepared by them and payment is made by the management to the canteen for the items used by them. They have also instructed to their departmental officers for using articles of limited item and limited quality in a month.

12. Considering the facts and circumstances mentioned above, I hold that the demand of the Dhanbad Colliery Karmchari Sangh that S/Shri Subhash Modak, Manoj Kumar, Nihas Modak, Rajesh Kumar, Balram, Potu Modak, Ganesh Modak, Arun Kumar Choudhary and Jagannath Modak employed in Pootki Balihari Project of M/s.BCCL be treated as departmental workers and paid wages as per NCWA-III is justified. Accordingly, the management is directed to treat the concerned workmen as departmental workers and pay them 50% back wages from 1986 within 30 days from the date of publication of the award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का. आ. 1246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी. एम. पी. डी. आई. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-1, धनबाद के पंचाट (संदर्भ संख्या 53/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-20012/463/2000-आई आर (सी-1)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S. O. 1246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 53/2001) of the Central Government Industrial Tribunal -cum-Labour Court No. I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s.C.M.P.D.I.L., and their workman, which was received by the Central Government on 16-4-2010.

[No. L-20012/463/2000-IR(C-I)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO-1, DHANBAD.**

In the matter of a reference U/s. 10 (1) (d)/(2A) of the
Industrial Disputes Act, 1947

Reference No. 53 of 2001

Parties : Employers in relation to the management
of Central Mine Planning & Design
Institute Ltd.

AND

Their Workmen.

Present : Shri H. M. SINGH, Presiding Officer.

APPEARANCES

For the Employers : Sh. A.K. Mishra,
Sr. Personnel Officer.
For the Workmen : Shri. K.N. Singh,
Representative.
State : Jharkhand
Industry : Coal.

Dhanbad the 6th April, 2010

AWARD

By Order No. L-20012/463/2000-(C-I) dated the 19th February, 2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

“Whether the action of the management of C. M. P. D. I. Ltd., Ranchi in dismissing Sri R. N. Singh, Driver from the service of the company w.e.f. 23-6-1999 is legal, proper and justified? If not, to what relief is the concerned workman entitled?”

2. The concerned workman has filed written statement stating therein that he was dismissed from service by CMPDI Ltd. by Chairman-cum-Managing Director, being the appellate authority and without affording an opportunity of hearing, by order dated 23-6-1999. The charge-sheet-cum-suspension order dated 18-1-98 was issued by the Regional Director, RI-VI, CMPDI, Singrouli, being neither the appointing authority nor delegated with disciplinary powers. No copy of any complaint, alleged preliminary enquiry report, or even copy of standing orders and/or delegation of disciplinary powers and/or copy of statement or document sought to be replied were disclosed or furnished to the workman while directing him to furnish reply within three days. On denial of the charges, the Regional Director, RI-VI forwarded the case to Director (O), CMPDI Ltd., Ranchi for constitution of enquiry. But the Enquiry Officer failed to show a semblance of quasi-

judicial conduct and/or compliance of principles of natural justice. The Enquiry was totally vitiated, as the Enquiry Officer conducted himself with a closed mind, totally biased and prejudiced. The allegation was that Md. Islam, Driver-cum-Mechanist and R.N. Singh, Driver assaulted Sri S.K. Karan, Senior Geologist on his office chamber at 1.05 P.M. on 29-12-97 in presence Sri A.K. Singh, Peon. No FIR was filed with Police. The Enquiry Officer in his report quoted Sri Karan's testimony that :

“He further states that the incident which took place on 29-12-97 with him in his office room at about 1.05 P.M. was seen only by him, Md. Islam, R.N. Singh and A.K. Singh. The time taken between the arguments by them and the assault on him by them was only 2 to 3 minutes.”

On the other hand, the evidence of A.K. Singh, management's witness as quoted by the Enquiry Officer is that : “He was on duty on 29-12-97. He leaves his residence at 8.00 A.M. On that day to Camp Office. He leaves the Camp Office at about 10.45 A.M. to NCL (HQ). He comes back to the camp Office at about 1.00 P.M. He at that time saw Sri Karan and Sri Nathi Singh standing by the side of the Jeep, near the office gate. Sri Nathi Singh asked A.K. Singh to bring immediately the Medical Card of Sri Karan from his residence. He brought his Medical Card from his house and gave it to him. Thereafter, Nathi Singh and Karan left the place on the Jeep. A.K. Singh then left the Camp with the dak to RI-VI, Jayant.” After preliminary enquiry, Sri S.Choudhary, R.D., who issued the charge-sheet-cum-suspension order dated 13-1-98 i.e. the Disciplinary Authority, recommended to Director (Operation) at CMPDI, Ranchi for taking immediate strong action against Md. Islam and R.N. Singh. The conclusion of the Enquiry Officer holding the workman concerned guilty of charges is based on no evidence. The said findings are wholly arbitrary, absolutely perverse and unsustainable. The C.M.D, CMPDI, Ranchi being the Appellate Authority dismissed the concerned workman from service by order dated 23-6-99. The C.M.D did not issue the chargesheet, nor he constituted any enquiry. The enquiry report was furnished by the Regional Director, one of the management's witness, who issued the chargesheet and suspension order, to whom the representation was submitted. The C.M.D. did not provide any opportunity of hearing to the workman concerned and thus violated all ethics and principles of natural justice.

It has been prayed before this Hon'ble Tribunal to please pass an award in favour of the workman holding that the action of the management in dismissing the concerned workman from service w.e.f. 23-6-99 is not justified and by directing the management to reinstate the concerned workman with retrospective effect with full back wages.

3. Written statement has been filed by the management stating that on 29-12-97 Sri Sunil Kumar Karan,

Senior Geologist, Drilling Camp, Singrauli made a complaint in writing that on 29-12-97 when he was sitting in the office Md. Islam, Driver along with Sri R.N.Singh came in the office and asked him why he has given remarks about him in the Attendance Register. Md. Islam was frequently abusing Sri Karan he disconnected the Telephone and told Mr. Karan that who has made you the officer. Mr. Karan further reported that Md. Islam said that you should have been in Cat-I and also assaulted Mr. Karan frequently. The another Driver Sri R.N.Singh also assaulted Sri Karan on his face and his chest. Sri Karan started bleeding from his mouth and his teeth was broken then he went to the hospital and got the treatment. A preliminary enquiry was constituted to find out about the actual fact that whether the allegation of assault and abuse by the two Drivers on Sri Karan were correct or not. Sri A.K. Pandey, SE (E & M) was appointed as Enquiry Officer to enquire about the factual complaint. Enquiry Officer submitted his report on 3-1-98 holding Sri R.N.Singh and Md. Islam, the two Drivers neglected the duties and disobeyed the order of Sri Karan, misbehaved, manhandled Sri Karan and when the others wanted to rescue Sri Karan they prohibited the others from rescuing Sri Karan.

On 13-1-98 a chargesheet was issued to Sri R.N.Singh, Driver-Cum- Mechanic, Cat.VI by the Regional Director for the following misconducts :

- a) Refusal to attend duty and thus absented from duty on 27-12-97.
- b) On 29-12-97 Sri R. N. Singh alongwith Md. Islam, Driver entered in the office and started argument with Sri Karan that why he has made entry in the attendance Register against his name on 27-12-97. Md. Islam gave Dhakka Mukkas and abused Sri Karan and Sri R. N. Singh challenged that he has scored out his attendance.
- c) Sri R.N.Singh threatened to assault Sri Karan and gave first blows on his mouth and assaulted Sri Karan.
- d) Sri R.N.Singh and Md. Islam assaulted Sri Karan, Sri Karan shouted for help and others entered in to the room to help Sri Karan as a result of the assault blood started flowing out of the mouth of Sri Karan and the tooth of his upper jaw twisted inside and broken.

The above acts of Sri R.N.Singh amounted to misconduct as per the order 26.03, 26.5, 26.18, 26.22 and 26.27 of the Certified standing Orders of CMPDIL.

Shri R.N. Singh, concerned workman submitted his reply on 16-1-98 denying all the charges levelled against him. Since his explanation was not found satisfactory the management constituted a departmental enquiry and for

which Sri J.K. Prasad, General Manager, was appointed as Enquiry Officer to enquire the charges levelled against him. During enquiry proceeding the concerned workman was afforded full reasonable opportunity in accordance with the principles of natural justice to defend him in the enquiry. He never made any complaint against the proceeding of the enquiry or against the Enquiry Officer. After conclusion of the enquiry the Enquiry Officer submitted his report on 2-11-98 holding that the concerned is guilty of the charges levelled against him. The second show-cause notice was issued to him enclosing the copy of the enquiry report. The concerned workman submitted his representation on 16-12-98 which was found by the management unsatisfactory and as such the Chairman-cum-Managing Director being the Disciplinary Authority, after considering the relevant documents issued an order for the dismissal of R.N.Singh from the services w.e.f 23-6-99. Against the dismissal order the concerned workman raised an industrial dispute before A.L.C.(C)-Ranchi, which ended in failure and thereafter the present reference has been referred before this Hon'ble Tribunal.

It has been prayed that this Hon'ble Tribunal be graciously pleased to answer the reference in favour of the management.

4. The concerned workman has filed rejoinder to the written statement of the management stating almost same facts as have been stated in the written statement.

5. The management has produced MW-1, L.Prasad and MW-2, J.K.Prasad who proved documents, Ext.M-1, M-1/1 and M-2.

The concerned workman has produced WW-1, A.K.Singh on preliminary point and the concerned workmen produced himself as WW-2 and has proved documents, Exts. W-1, W-2 & W3. The enquiry was held on 15-12-2005.

6. The concerned workman died on 13-1-2008 and his wife, Usha Devi has been substituted.

7. Main arguments advanced on behalf of the concerned workman is that no independent witness regarding alleged incident has been produced by the management, As per statement of the management's witness in preliminary enquiry, Sri S.K.Karan stated that only the concerned worker, Md. Islam and R.N.Singh were present at the time of incident. But A.K.Singh, who has stated in this case as WW-1 that he has not seen any incident. So it shows that no independent witness has been produced to show the incident in support of the management, Moreover, as per allegation of the concerned workman at the time of the incident in the Log Book it is mentioned that Sri Karan was away from the place of alleged incident is stated to be at the time of 1.05 P.M. So they have not produced the Log Book so that it may prove that at the time of incident Sri Karan was away from the place of incident.

Another arguments advanced on behalf of the workmen that no show-cause notice was given to him. In this respect the management's witness, L. Prasad (MW-1) stated in cross-examination at page 3 that I am not aware of the fact whether after completion of the enquiry proceeding and prior to passing of the order of dismissal any further opportunity was afforded to the concerned workman or not. In this respect the Hon'ble Supreme Court in Current Labour Report, 1991 page 61 laid down- that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would therefore be entitled to the supply of a copy thereof and that the Forty second Amendment has not brought about any change in this position.

The concerned was not served any of the enquiry proceeding of the report. It shows that law laid down by the Hon'ble Supreme Court has not been followed by the management. In this respect MW-2, Enquiry Officer has clearly stated in cross-examination at page 3 that I had not supplied the copy of the preliminary enquiry to the concerned workman.

Another argument advanced on behalf of the workmen that Appellate Authority became Disciplinary Authority and passed dismissal order which is clearly violation of natural justice. In this respect dismissal order passed by C. M. D. who is Appellate Authority shows that he himself has passed dismissal order as Appellate Authority, so it shows natural justice has not been followed in dismissing the concerned workman from services.

Another arguments advanced on behalf of the workmen is that MW-1, L. Prasad in cross-examination at page 3 stated that C. M. D. being the highest official of the concerned establishment is always considered to be a Disciplinary Authority. He has also stated that I am not aware of the fact whether after completion of the enquiry proceeding and prior to passing of the order of dismissal any further opportunity was afforded to the concerned workman and also stated that it is true that only a competent authority can issue a charge-sheet against a workman. In this connection with the present case Regional Director, R.I.VI had issued the charge-sheet. In cross-examination at page 4 he stated that the reply furnished by the concerned workman to the charge-sheet served upon him was being considered by the same authority who had issued the charge-sheet. It has also been stated that in the enquiry proceeding the Regional Director, who had issued the charge-sheet, had also appeared as witness on behalf of the management, and it is true that Sri S. Choudhary, Regional Director, was the Disciplinary Authority. It shows that the disciplinary authority, an officer, who had issued the charge-sheet became the same person. Again it has been stated that the said Disciplinary Authority on whose order the disciplinary proceeding was constituted had not

himself appeared physically in course of enquiry proceeding for the purpose of giving his evidence, rather simply he had appeared and written down his statement in the register and had thereafter left, and it is true that a disciplinary authority is required to conduct himself independently and in an unprejudiced manner. It shows that the Disciplinary Authority himself became as witness in the above case before the Enquiry Officer by giving his evidence by writing down his statement in the register. It shows the judicial attitude of the management's witness.

As per Ext.W-1 which is office order of the management for dismissal from service by the management. It shows that no enquiry proceeding or report has been submitted and second opportunity was given to the concerned workmen. As per charge-sheet which has been proved by the concerned workman and he was dismissed for grave misconduct. He was given only 3 days opportunity for reply which is not sufficient because the misconduct for which he has been dismissed 3 days time is not sufficient for giving his reply because as per company's standing order, Rule 27.2 in case of major penalty 7 days time has to be given for reply.

8. On behalf of the concerned workman a decision has been referred reported in 2007 (2) JLJR 177 (SC) in which Hon'ble Supreme Court laid down that—

“Payment of Gratuity Act, 1972 - Section 4(6) - gratuity, payment of - rules framed by the holding company of the respondent-company are not statutory rules - Provisions of the Act, therefore, must prevail over the rules - power to withhold gratuity must be subject to provisions of the Act - a statutory right accrued cannot be impaired by reason of a rule which doesnot have the force of law.

Coal India Executives Conduct, Discipline and Appeal Rules, 1978 - Rule 34.2 - Provides for continuation of disciplinary proceeding despite retirement - but it would not mean that a major penalty can be imposed after retirement - Penalties must be imposed during the service period.

Payment of Gratuity Act, 1972 - Section 4(6) - the provision not only creates a right to payment of gratuity but also lays down guidelines for its quantification and conditions that must be fulfilled - forfeiture/reduction of gratuity limited to the extent of damage of loss.”

Another law referred by the concerned workman is reported in 2008 (4) JLJR 7 in Hon'ble Supreme Court laid down - “Payment of Gratuity Act, 1972 - Sec. 4 (6) (a)-provisions of Gratuity Act will prevail over the rules framed under Coal India Executives' Conduct, Discipline and Appeal Rules, 1978 - power to withhold gratuity contained in Rule 34.3 must be subject to the provisions of the Act- Gratuity becomes payable as soon as the employee retires after rendition of minimum five years' continuous service-

gratuity cannot be withheld after retirement during pendency of departmental proceeding - payment of gratuity amount cannot be ordered with interest at the reduced rate. It only shows that the concerned workman was dismissed from service without sufficient opportunity being given to him. FIR shows that no incident has taken place.

Considering the above facts and circumstances, I hold that the dismissal of the concerned workman is not justified.

9. Accordingly, I render the following award—The action of the management of C.M.P.D.I.L., Ranchi, in dismissing Sri R. N. Singh, Driver from the service of the company w.e.f. 23-6-99 is not legal, proper and justified. Hence, the concerned workman is entitled to be reinstated in service w.e.f. 23-6-99 with 75% back wages till his death with other consequential benefits. The management is directed to pay all the legal dues to his wife, Usha Devi, who has been substituted in this reference case. The management is directed to act accordingly within 30 days from the date of publication of the award.

H.M. SINGH, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का.आ. 1247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एलिटालिया इटलीज वर्ल्ड एयरलाइन्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, सं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 93/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-11012/24/2003-आई आर(सी-1)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S.O. 1247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 93/2003) of the Central Government Industrial Tribunal/Labour Court, No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Alitalia Italy's World Airline and their workmen, which was received by the Central Government on 16-4-2010.

[No. L-11012/24/2003-IR (C-I)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
KARKARDOOMA, DELHI

I. D. NO. 93/2003

In the matter of dispute between:

Shri Kirpal Singh Saini,
H-10/D, Gulmohar Apartment,
D-Block, Vikaspuri,
New Delhi - 110 018

... Workman

Versus

Alitalia Italy's World Airline,
Room No. 22, Import-III Building,
Cargo Terminal,
Indira Gandhi International Airport,
New Delhi - 110 037

...Management

AWARD

The Central Government, Ministry of Labour vide Order No. L-11012/24/2003-IR (C-I) dated 13-6-2003 has referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s. Alitalia Italy's World Airline, New Delhi in terminating the services of Shri Kirpal Singh Saini is just, fair and legal? If not, to what relief is the workman concerned entitled?”

2. The applicant workman Shri Kirpal Singh Saini has filed his statement of claim in which he has submitted that he joined the respondent Alitalia Italy's World Airline as Assistant Flight Dispatcher and was posted in Bombay on 1-6-1977. He was transferred to I.G.I. Airport, Delhi on 19-10-1982. Since then he has been working at the I.G.I. Airport, New Delhi, as Traffic Officer. The applicant has filed a copy of the appointment letter dated 27-4-1977 and it has been annexed as Annexure-I. The post of the applicant was designated as Assistant Flight Dispatcher w.e.f. 20-1-1987. Later on, he was promoted to the post of Flight Dispatcher CV/L7 w.e.f. 3-3-1987, and thereafter, as Manager-Flight Operations.

3. That on account of the high capability and meritorious services rendered by the applicant, the management of the Alitalia Airline awarded the applicant, merit increment and promoted him to Level-17, giving 8 level upward increase in service career w.e.f. 22-12-1988. The applicant was transferred and posted in the Cargo Division at I.G.I. Airport, New Delhi, as Flight Dispatcher w.e.f. 1-6-1993. This had happened as the management of the Airline closed the passenger service at Delhi and some of the members of the staff so rendered surplus from catering, passenger, sale, passenger traffic department, etc. were transferred and adjusted in the Cargo Division at New Delhi itself. That the management of the respondent promoted the applicant as Licenced Flight Dispatcher (E-1/20 level) w.e.f. 1-4-1994. Since the applicant was not getting any overtime, he was allowed special ex-gratia payment of Rs. 1,00,000 (Rupees one lakh only) for the extra work done by him from 1-4-1994 to 31-12-1996. The applicant was also allowed FOD amount of Rs. 4,000 (Rupees

four thousand only) per month which was increased to Rs. 6,000 (Rupees six thousand only) per month w.e.f. 1-1-1998. That on account of the excellent services rendered by the applicant, he was given promotion to the post of Manager-Flight Operations w.e.f. 1-9-1997 as per order dated 21-7-1998 (copy enclosed as Annexure-IV). According to the applicant, he continued to perform his assigned technical duties at the IGI Airport, New Delhi, with utmost devotion and sincerity. He has asserted that he falls under the category of Pilot and as such, is a workman, as has been held by the High Court of Delhi in Mathur Aviation case of 1976.

4. It is further submitted by the applicant that the management deputed one of its officers from Mumbai on 27-9-2000 to make the applicant agree and to illegally pressurize him to tender his resignation from the respondent airline on the false plea that the post of the Flight Dispatcher/Manager-Flight Operations has become redundant, as the work of Flight Dispatcher has been fully automated. The management offered a meagre sum of Rs. 4,00,000 (Rupees four lakh only) to him and asked him to forego other claims.

5. The applicant has further submitted that the post held by him could not become redundant as the services of a qualified and Licenced Flight Dispatcher/Manager-Flight Operations are very much essential and the applicant is the only qualified and licenced officer with the respondent airline to perform the technical duties and there was none in the organization who could sign the Air Traffic Control Flight Plans being submitted to the Delhi Air Traffic Control for the flights operated by Alitalia Airlines from Delhi. The applicant has given various reasons and has claimed that the post held by him could not be declared redundant. Reasons in detail have been mentioned in para 10 of the statement of claim.

6. That arbitrary and illegal action on the part of the respondent airline to terminate the services of the applicant is highly deplorable. There was no earlier indication from the respondent airline to the effect that they actually wanted to declare the services of the applicant as surplus on account of introduction of Automated Lido System as the system itself was introduced from 1-1-1999. That the respondent airline has declared the post of Flight Dispatcher as redundant after a lapse of about two years.

7. That in case the services of the applicant were not required, the management could have given him notice so that he could switch over to some other airline with gainful employment. The order of termination of services of the applicant declaring the post as redundant in nothing but an eye wash and a deep rooted conspiracy hatched at a high level to illegally and arbitrarily do away with the services of the applicant. That the impugned order is unsustainable in the eyes of law and deserves to be

quashed and the applicant should be treated in continuous service with payment of back wages. That in earlier case, settlements had been reached between the Alitalia Employees Association and the respondent airline at Bombay and Delhi but in this case the respondent airline did not try to settle the matter with the applicant amicably and honourably. That in complaint (ULP) 1348 of 1992 the parties had arrived at a settlement before the Industrial Court of Maharashtra at Bombay and the management had agreed to give the benefit to the retrenched employees which are mentioned in para 13 of the statement of claim. The applicant has specifically pointed out that the employees who were of the age of 54 years and above were given full salary upto retirement by the management.

8. It is further the case of the applicant that he had performed his duties as Flight Dispatcher/Manager-Flight Operations at the I.G.I. Airport upto 10th January, 2001 and all necessary documents, i.e. A.T.C. plan paper for the flights were filed under the signatures of applicant with the Delhi Air Traffic Controller. That there was no intimation to the applicant and to the Alitalia Delhi Office of the management that the services of the applicant were retrenched w.e.f. 30 November, 2000. It is specifically denied by the applicant that Alitalia Airline management has served any letter on him informing him of the termination of his services.

9. That the applicant proceeded on leave because of ill health w.e.f. 10-1-2001 and has written letter on 25-1-2001 to Mr. M. Benani, Administrative Manager and Mr. N. J. Vaz, General Manager, Alitalia Bombay Office, and he received a reply vide letter dated 30-1-2001 in which it was mentioned that copy of letter dated 24-1-2000 was again enclosed but no copy of that letter was found enclosed with the aforesaid letter.

10. The applicant has further submitted in the statement of claim that the respondent airline has not released the entire emoluments to him even for the month of November 2000 as allowances for shift/meal/transport, etc., have not been paid. For the month of December 2000 and onwards salary and other allowances have not been paid to him. Similarly, Christmas bonus, which is paid during that period, has also not been paid so far. That no cheque of any dues has been sent to him so far. That the management while terminating the services of the applicant has not followed the provisions of 25F of the Industrial disputes Act, 1947 and the action of the respondent airline amounts to illegal termination of his services. It is submitted that the Hon'ble Supreme Court of India has observed in a number of cases that non-compliance of the provisions of Section 25F of the Industrial Disputes Act, 1947 makes the termination void ab initio and such a workman is entitled to reinstatement in service with full back wages.

11. It is further submitted by the workman in his statement of claim that he is entitled to full salary upto retirement as any employee of the age of 54 years and above is entitled to full salary up to the age of retirement i.e. 58 years. That this formula has been accepted by the management of the Alitalia Airline before other tribunals as stated earlier. That the applicant had 3 years and 8 months of service left, if worked out from 11-1-2001, before he could retire at the age of 58 years. He has given details of payments to which he was entitled to, together with interest upon E.P.E., deposit and these details have been mentioned in para 21 of the statement of claim. According to the workman, the management is liable to pay him as amount of Rs. 48,12,071 (Rupees forty eight lakh twelve thousand seventy one only) as per the accepted formula in the two cases settled in the Courts between the management and Alitalia Employees Association at Bombay and New Delhi. That the management is required to pay interest on the detailed payment, as per the accepted norm at the market rate. According to the workman, he is also entitled for leaves as per settlement already reached by the management with the Employees Association in the year 1992 and 1993, and other reliefs as have been mentioned in para 25 of the statement of claim.

12. The applicant has ultimately prayed that the action of the management/respondent airline in terminating the service of the applicant be declared as unjust, unfair, illegal and arbitrary, and as having been passed with mala fide intention and reinstate him in the service with full back wages and other consequential benefits besides awarding interest at market rate and exemplary costs against the respondent airline.

13. The management airline has contested the claim of the applicant and has filed a written statement in which it is submitted that the claim filed by the workman is false and misconceived and there is no industrial dispute between the parties. That the applicant claimant was admittedly working as Manager-Flight Operations and was accordingly working in a managerial and supervisory capacity and was not a workman within the definition of Section 2(s) of the Industrial Disputes Act 1947. It is submitted that the post of Manager-Flight Operations was rendered surplus as the said work was fully automated. The management has taken a policy decision to declare the post of Flight Dispatcher/Manager-Flight Operations as redundant. The management, therefore, terminated the services of Manager-Flight Operations at all stations except at New York. The management however as a matter of abundant caution offered the claimant retrenchment compensation. The same was however not accepted by the claimant. The action of the management therefore is legal and justified and the claimant is not entitled to any relief, much less the relief prayed for in the statement of claim.

14. While giving para-wise reply to the statement of claim, it is submitted that the claimant was working at an executive level and was therefore not a workman as defined under Section 2(s) of the Industrial Disputes Act. It is submitted that in the year 1993 when passenger service was closed down, several employees were rendered surplus and they were accordingly retrenched. However, the management adjusted the claimant in the Cargo Division, which shows the bonafide of the management towards the claimant. That the claimant was working as Manager-Flight Operations with the management and was accorded senior ranking. It is reiterated that the work performed by the claimant was managerial and supervisory in nature. It is categorically submitted that the claimant does not fall under the category of Pilot as there are extensive rules, regulations and licensing procedure for a person to become a Pilot. That reference to "Pilot" by the claimant has been made with ulterior motive. That the reference of the case law given by him has no application to the case at hand. It is submitted that since the work of Manager-Flight Operations was rendered surplus and the claimant was therefore retrenched. The management offered a sum of Rs.4,22,881 towards retrenchment compensation and notice pay. However, the claimant refused to accept the same.

15. The management has further submitted that there is no truth in the contention of the claimant that the post held by him could not become redundant. That the averments of the claimant regarding signing of ATC (Air Traffic Control) flight plan is also not correct as the same can also and is generally signed by the Captain operating the freight flight as per the AIP (Aeronautical Information Publication) India. It is further submitted that the duty performed by the claimant was not of technical nature but of managerial and supervisory nature. While rebutting the claim of the applicant that the post held by him could not become redundant, the management has submitted that it is within the legal discretion of the management to run its business as it thinks fit and proper. The decision of automation of flight operation was taken at the highest level. It is asserted that the management never victimized nor was vindictive towards the claimant.

16. It is further submitted that although the management was well aware that the claimant was not a workman as per the Industrial Disputes Act 1947, even then by way of abundant caution and without prejudice to its rights, the management offered him retrenchment compensation and one month notice pay as required under the Section 25F of Industrial Disputes Act amounting to Rs. 4,22,881 representing retrenchment compensation @ 15 days salary for every completed year of service plus one month pay in lieu of notice by cheque no. 735291 and sent the same to the claimant by Speed Post but the same

was returned. Thereafter, the management again issued fresh cheque no. 829643 dated 30-5-2001 and sent the same to him by registered post. That the management had made it very clear to the claimant that his services stood terminated w.e.f. 30-11-2000 and any reference to the continuation in the service of the management is totally irrelevant and without authority. It is submitted that the management in September 2000 issued a letter to the claimant. The claimant further refused to accept the same and proceeded on leave, without any sanction from the management. The management thereafter was left with no other option but to re-issue the same letter on 24-11-2000 to the claimant. The letter dated 24-11-2000 was not any fresh, or separate, or independent letter. It is specifically denied that the claimant was given the said letter for the first time only on 1-1-2001. That since the services of the claimant have been terminated by letter dated 24-11-2000 w.e.f. 30-11-2000, there was no question of his performing the duty thereafter. He should be put to strict proof of the same.

17. It is further submitted that the claimant did not return his Airport Pass and might have entered the office. It is submitted that the claimant has been paid all dues till the month of December 2000. That full and final settlement of the claims of the claimant has been done by the management. That all legal dues with regard to gratuity were sent vide cheque no. 830605 dated 21-12-2001 for a sum of Rs. 5,07,451 towards full and final settlement. That the provident fund of the claimant was also settled and cheque dated 9-7-2002 for a sum of Rs. 12,01,996.68 was issued and handed over to the claimant before the Conciliation Officer on 27-7-2002 which was duly accepted by the claimant. It is submitted that the management has followed the provision of the Section 25F of the Industrial Disputes Act 1947 out of abundant acution and has offered the claimant all legal dues which have been cleared and sent to the claimant and nothing is due from the management. That the claimant is not entitled to any relief as per the settlement arrived at between the management and the Employees Association in the year 1992-93 as the claimant is not covered under the said settlement. According to the management, the claimant is not entitled to any relief, much less the reliefs prayed for in the statement of claim. The management has therefore prayed that his statement of claim may be dismissed and this Tribunal may pass further orders as it deems fit.

18. By filing a rejoinder, the claimant has refuted the claims made by the management in its written statement and has reiterated his claims made in the statement of claim.

19. On the pleadings of the parties, the following issues were framed:

(i) Whether the claimant is a 'workman' as defined under section 2 (s) of the I.D. Act, OPW?

(ii) Whether the action of the management of M/s. Alitalia Italy's world Airlines, New Delhi in terminating the services of Shri Kirpal Singh Saini is just, fair and legal, OPM?

(iii) Whether Shri Kripal Singh Saini was working till 10-1-2001, as alleged, OPM?

(iv) As per the terms of reference.

20. In support of his claim the workman has testified by filing his affidavit. He has been cross examined by the AR of the management. In rebuttal to that, the management has examined its Cargo Sales Manager, Mr. Rakesh Chandra, and he too has filed his evidence on affidavit. He has also been cross-examined by the AR of the workman.

21. I have heard the Ld. ARs of the parties and have gone through the record including the written submissions placed by them on the record. My findings on the above issues are as under:-

22. Issue no. (i) Whether the claimant is a 'workman' as defined under section 2 (s) of the I.D. Act, OPW?

This is the crucial issue of this case. Onus to prove this issue is on the claimant. It is undisputed that the claimant Shri Kripal Singh Saini joined the management as Assistant Flight Dispatcher and was posted at Bombay on 1-6-1977. He was transferred to I.G.I Airport, Delhi on 19-10-1982 and since then he was working there as Traffic Officer. With effect from 20-1-1987 his post was designated as Assistant Flight Dispatcher and later on he was promoted to the post of Flight Dispatcher and, ultimately, he was promoted as Manager-Flight Operations. The claimant has asserted that he was assigned and performing technical duties at I.G.I, Airport, New Delhi. According to him, he falls under the category of 'pilot' and, as such, is a workman.

23. The management has contested the claim of the workman that he falls under the category of pilot. According to them, there are extensive rules, regulations and licensing procedures for a person to become a pilot and that reference to 'pilot' by the claimant has been made with ulterior motive.

24. The claimant, Shri Kripal Singh Saini, as WW1, in cross-examination, has stated that he had got the Commercial Pilot Licence which he renewed from time to time upto 1982 or 1984. He has admitted that thereafter he did not renew the Commercial Pilot Licence. He volunteered to add that he did not get the same renewed as he had got the licence of Air Traffic Dispatcher. He has admitted further in cross-examination that during his posting in the management, Alitalia, he had never piloted an aircraft because it was not his job.

25. Thus, claimant Shri Kripal Singh Saini, of his own admission, has never piloted any Alitalia aircraft nor it was his job to do so while working in the Alitalia. That being the position then how could he claim to fall in the

category of 'pilot'? He was neither appointed as a pilot to fly the Alitalia aircraft nor he ever did the same and so his claim that he falls in the category of 'pilot' cannot be accepted.

26. However, still the factual scenario cannot be ignored. It still requires to be seen of Shri Kripal Singh Saini falls in the category of 'workman' or not. The last post of Shri Kripal Singh Saini was Flight Dispatcher/Flight Operations Manager. Shri Saini has claimed that he was performing technical duties on his last post before his services were terminated. In his cross-examination, Shri Kripal Singh Saini has stated that there was no officer above him but he hastened to add that there was no officer below him also. He has admitted as correct that his job is a 'technical' job and the same is highly qualified and complex. This suggestion from the side of the management to the claimant, in cross-examination, that his job was 'technical' and highly qualified and complex in nature, shows that the management truly knew and believed that the job of the claimant was 'technical' and highly qualified and complex. The claimant has also got licence of aircraft dispatcher.

27. In rebuttal to the above, the management has claimed that the work performed by the claimant was of 'managerial' nature and he was working at an executive level and his job was not of 'technical' nature. The management has pointed out the nature of duties performed by claimant, Shri Kripal Singh Saini and these duties are mentioned in document Exb.MW1/1. It is submitted from the side of the management that a Flight Dispatcher has two main responsibilities - One is readying a flight for its release and second, the monitoring of the flight as it makes its way to its destination.

28. The above main duties of the claimant pointed out by the management itself are proof in support of the case of the workman that he was performing 'technical' duties as a Flight Dispatcher. The witness of the management, Shri Rakesh Chander, Cargo Sales Manager, as MW1, has admitted in cross-examination that Shri Kripal Singh Saini was working on a 'technical' post as Flight Dispatcher. He has further admitted it as correct that Shri Kripal Singh Saini fulfilled all the requirements of the post of a Flight Dispatcher.

29. It thus no longer remains in doubt that claimant, Shri Kripal Singh Saini, was performing duties of a 'technical' nature and it is difficult to accept the stand of the management that the duties performed by the claimant were 'managerial' or 'administrative', or 'supervisory' in character. No person has been shown to be working under the claimant and he was single handedly performing his 'technical' duties and, so, it cannot be held that he was employed in any 'supervisory' capacity, or that his functions were mainly of a 'managerial' nature.

30. It is now a settled position in law that an undue importance need not be given to the designation of an employee, or the class to which he belongs. A nomenclature and designation are not very much material for deciding whether an employee is a workman or not. What is required to be seen is as to what are the main and principal duties carried out by the official, i.e. whether these are technical, clerical or supervisory, administrative or managerial in character. If the main work done is of technical or clerical in nature, the mere fact that some supervisory duties were also carried out incidentally, the same will not convert the employment from that of a technical or clerical into one in supervisory capacity.

31. It has been held that in (1985) 3 SCC 371 that the nature of the work of a workman is to be ascertained from the dominant nature of duties performed by him and not by nomenclature.

In another case, Anand Regional Co. Op S. Union Vs Shailesh Kumar Harshadbhai Shah 2006 (7) Scale 603, it has been held that for determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant consideration. Supervision contemplates direction and control. While determining the nature of work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given to the designation of an employee, or the name assigned to and the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work he was required to supervise. Being in charge of the section alone and that too it being a small one and relating to quality control would not answer the test.

In the case of 'Anand Bazar Patrika (P) Ltd. Vs. Workmen (1970) 3 SCC 248', it has been held that the question whether a person is employed in a supervisory capacity or on technical or clerical work depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a technician or clerk. If a person is mainly doing supervisory work but incidentally or for a fraction of the time, also does some technical or clerical work, it would have to be held that he is employed in supervisory capacity, and conversely, if the main work done is of technical or clerical nature, the mere fact that some supervisory duties are also carried out incidentally or a small fraction of the work done by him will not convert his employment as a technician or a clerk into one in supervisory capacity.

For the same proposition, cases 'DP Maheshwari Vs Delhi Admn & Ors (1983) 4 SSC 293' and 'A.F. Ferguson & Co. Vs. Presiding Officer (CWP No. 2649/2002)' can also be looked into.

32. From what has been discussed above, it becomes abundantly clear that the workman has been able to discharge the onus put on him that he is a 'workman' as defined under Section 2 (s) of the Industrial Disputes Act 1947. The issue is answered in the affirmative and in favour of the workman, and he is held to be a 'workman' as defined under Section 2 (s) of the Industrial Disputes Act, 1947.

33. Issue no. (ii) Whether the action of the management of M/s Alitalia Italy's World Airlines, New Delhi in terminating the services of Shri Kripal Singh Saini is just, fair and legal, OPM?

The onus to prove this issue is on the Management. While deciding issue no. (i) it has been held that Shri Kripal Singh Saini is a 'workman' and the claim of the management to the contrary has not been accepted by the Tribunal. As Shri Kripal Singh Saini has been held to be a workman in this case, he could be retrenched by the management only by following the conditions precedent to retrenchment of workman, as enumerated in Section 25F of the Industrial Disputes Act 1947. No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until —

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate government or such authority as may be specified by the appropriate government by notification in the Official Gazette.

34. In *State of Rajasthan v. Miss Usha Lokwani*, 1994 LLR 369 (Rajasthan) it has been held that the above mentioned conditions enumerated in Section 25F are conditions precedent to retrenchment.

In the said case it has also been held that the provisions of Section 25F are couched in a mandatory form, and non-compliance therewith has the result of rendering the order of retrenchment void ab initio or non-est.

Further, in *Hari Prasad v. A.D. Divelker*, AIR 1957 SC 129, it is again held that the standardization of retrenchment compensation and doing away with a preplexing variety of factors for granting retrenchment compensation may well have been the purposes of Section 25F though the basic consideration must have been the granting of unemployment relief.

In another case, AIR 1985 SC 722, it has been held that in case of termination of service of a permanent employee by giving three months notice or pay in lieu thereof would be bad and violative of Article 14 of the constitution as such terms of contract are capable of vicious discrimination and it shall be naked hire and fire rule.

In yet another case reported in AIR 1987 SC 111 it has been held that termination of service of a permanent employee by giving him 90 days notice, or pay in lieu thereof, would be violative of Article 14 and 16 of the Constitution.

35. The workman in his evidence as WWI has asserted that he has not been given any letter of retrenchment. Though the management claims that they had sent the letter dated 24-11-2000 to him, there is no documentary proof in support of the claim of the management that letter dated 24-11-2000 was in fact served upon the workman whereby the services of the workman were allegedly terminated. It is in fact another letter dated 1-6-2001 of the management which confirms that the said letter was not served and the same was returned to them undelivered, and they again wrote a letter dated 1-6-2001 to the workman. Workman, Shri Kripal Singh Saini, has stated that he received a copy of the letter dated 24-11-2000 in the Hon'ble High Court on 10-1-2001 when the matter was listed there. The management thus has not satisfied the conditions precedent to retrenchment of workman, Shri Kripal Singh Saini. At the time of his retrenchment he ought to have been given one-month notice in writing indicating the reasons for retrenchment, or the workman was to be paid wages in lieu of the period of the notice. He also ought to have been paid the retrenchment compensation which shall be equal to fifteen days average pay for every completed year's continuous service or any part thereof in excess of six months.

As conditions precedent to retrenchment, as required by Section 25F of the Industrial Disputes Act 1947, have not been complied by the management in this case, the action of the management M/s Alitalia Italy's World Airlines in terminating the services of Shri Kripal Singh Saini shall have to be held as unjust, unfair and illegal, and I hold it accordingly.

36. Issue no. (iii) Whether Shri Kripal Singh Saini was working till 10-1-2001, as alleged, OPM?

Onus to prove this issue is on the workman. According to him he had performed his duties as Flight Dispatcher/Manager-Flight Operations at the I.G.I Airport upto 10th January 2001 and all the necessary documents for the flights were filed under his signatures with the Delhi Air Traffic Controller and he did not receive any intimation from the management that his services had been terminated w.e.f. 30th November 2000.

37. The management has contested the claim of the claimant and has asserted that the services of the claimant had been terminated vide letter dated 24-11-2000 w.e.f. 30-11-2000 and there was no question of his performing the duties thereafter.

Though the workman has made a claim, as such, in his affidavit, the management has rebutted the said claim in the affidavit of their witness. There is absolutely no documentary evidence on record to show that claimant, Shri Kripal Singh Saini, had in fact performed his usual duties up to 10-1-2001. He could have summoned the record from the management to prove his claim that he in fact performed his duties with the management up to 10-1-2001. However, no such steps have been taken by him and there is no documentary evidence from his side to prove that he in fact worked with the management up to 10-1-2001. It is therefore difficult to accept his claim that he, in fact, has worked till 10-1-2001 with the management. The issue is decided accordingly against the workman.

38. Issue no. (iv) As per the terms of reference

Now the next question for consideration would be as to what relief is the workman concerned entitled to in this case.

39. As the action of the management has been held to be unfair, unjust, illegal and void ab initio, the order of retrenchment is non-est in this case. In the normal course, the workman would have been entitled to reinstatement in service with full back wages. However, there is a peculiar situation in this case. The workman has already crossed the age of superannuation. In this situation, it would be just and fair to hold that he is entitled to full salary up to the age of his retirement, i.e. 58 years, with all attendant and consequential benefits attached to the post as if he had served the management till the date of his superannuation. This issue is decided accordingly in favour of the workman and against the management.

ORDER

40. In view of my above findings on the issues framed, I hold that the action of the management of M/s. Alitalia Italy's World Airline in terminating the services of Shri Kripal Singh Saini is neither just nor fair nor legal nor valid. Workman, Shri Kripal Singh Saini, is therefore held entitled to full salary upto the age of superannuation, i.e. 58 years, with all attendant and consequential benefits attached to the post as if he had served the management till the date of his superannuation.

The Award is passed accordingly in this case and reference I.D. No. 93/2003 sent by the Central Government stands disposed of accordingly.

Dated: 30-3-2010

SATNAM SINGH, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का.आ. 1248—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई. ओ. सी. एल.के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सी. जी. आई. टी., कानपुर के पंचाट (संदर्भ संख्या 118/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-30012/66/97-आईआर(सी-1)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S.O. 1248—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 118/98) of the Central Government Industrial Tribunal-cum-Labour Court C. G. I. T., Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of I. O. C. L. and their workmen, which was received by the Central Government on 16-4-2010.

[No. L-30012/66/97-IR (C-I)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 118 of 98

BETWEEN

Mahasachiv,
Indian Oil Pipe Line Employees Association,
Registered Office,
Post Pipal Gaon,
Allahabad.
AND

Senior Manager,
Indian Oil Corporation Limited,
Pipe Line Division,
Subedar Ganj,
Allahabad.

AWARD

1. Central Government, MOL, New Delhi, vide notification No. L-30012/66/97-IR (Coal-1) dated 30-6-98, has referred the following dispute for adjudication to this tribunal—

- Whether the action of the management of IOCL, BK Pipeline Allahabad, for transferring Sri Mohd. Isha Ansari, Sri Murhupal both chowkidar from Allahabad & Mughalsarai respectively is justified? If not, to what reliefs are these workmen are entitled?
- Whether the action of the management of IOCL, in deducting penal rent from Sri S. N. Rai Opt. Gr V at

Kanpur for retaining quarter at Barauni after expiry of two years but not acting similarly in case of Sri S.R.P. Yadav is justified? If not, to what relief the workmen is entitled?

2. Brief facts are—

3. Ministry of Labour has sent the aforesaid reference. This reference relates to the problem of Sh. Mohd. Isha Ansari and Sri Murhu Pal, boths chowkidar. Their grievances were that they were malafidely transferred from Allahabad and Mugalsarai.

4. In this connection I would like to say that regarding this part of reference authorized representative of the claimants specifically stated before me that he does not want to press for this part of reference. He has put an endorsement on the order sheet mentioning the above fact. Claimant has also filed an application along with affidavits that he does not want to press on this point.

5. Therefore, this part of reference is decided against aforesaid workmen as not pressed by them.

6. Now in the same reference there is one more part in this the claimant Sri. S. N. Rai has claimed that the management has been unfair in deducting penal rent from his salary for retaining quarter at Barauni after expiry of two years.

7. Therefore, I would like to mention the facts only regard to Sri S.N. Rai. He alleged that he was appointed in the opposite party company in the year 1967. He has been acting President of the Union before year 1995 and in the year 1995 and 1996 he was Dy. President. Due to trade union activity Sri Rai was served a charge sheet on the basis of fabricated charges and Sri Rai was dismissed from service on 11-5-88 by the opposite party. Sri Rai moved before labour Court Dhanbad and court passed the judgment in his favour. The management filed a writ petition against the said decision. Thereafter in Patna High Court (Ranchi Bench) the case has been finally decided in favour of workman. After reinstatement by the opposite party he was given a post of C grade operator in Kanpur Pipe Line in the year 1995. After joining at Kanpur, the management has not allotted any quarter to Sri Rai with malafide intention. Sri Rai was allotted a quarter no. D/51 in the year 1995 at Barauni and his family members are living in the quarter. Sri Rai has not vacated the quarter at Barauni because no quarter has been allotted to him at Kanpur by the opposite party. It is stated that similar type of employee Sri S. R. P. Yadav who was posted at Allahabad was transferred from Allahabad to Mugalsarai and he continued to retain the quarter at Allahabad but no penal rent has been deducted by the management from his salary whereas penal rent has been deducted from the salary, therefore, management has adopted the policy of discrimination.

Therefore, he prayed that deduction of penal rent from the salary of Sri Rai in the year 1995 should be cancelled and arrears of amount should be granted to him.

8. Opposite party has filed with written statement alleging all the facts. As the issue regarding the transfer has been settled, therefore there is no use of mentioning those facts. Regarding the deduction of penal rent opposite stated that Sri Rai was working at Baranui Pump Station of Barauni-Kanpur Pipeling was transferred as operator C at BPL Kanpur. The transfer was later. As per rules of the corporation upon permanent transfer such employee is entitled only to retain the quarter for a maximum period of two months unless permitted. Sri Rai initially requested to retain the quarter up to 31-12-95 which was accepted. Again on his request after obtaining the approval of Director he was permitted to retain the quarter up to 31-12-96 and he was supposed to vacate the quarter by 31-12-96. Opposite party also reminded vide letter dated 28-11-96, that retaining of the quarter after this period was not permissible under rules but he did not vacate the quarter on or before 31-12-96. When he did not vacate the quarter necessary orders were issued to the accounts department to deduct penal rent with effect Jan. 97 from his salary. Sri Rai in his reply dated 10-12-96 tried to justify retention of the quarter on flimsy ground which was not justified having no legal basis. It is also stated that Sri Rai obtained a housing loan from the Coporation and had agreed to the terms and condition that after the completion of the construction of the house within 18 months of sanction of the loan he will vacate the company quarter. He had already constructed a house but he still not vacated the quarter, therefore, in the given circumstances deduction of penal rent from the salary of Sri Rai is justified. It is also stated that where the rules provide and giving examples of other employees contrary to rule does not give any power or right to the claimant. It is also stated that Sri Rai had not made any request for the allotment at Kanpur. It is wrong to say that the management has done discrimination or unequal treatment in the case of Sri Rai. Even the case of Sri S. R. P. Yadav is very old one and it cannot be cited as precedent.

9. Union has filed the rejoinder contradicting the aversions made in the written statement and reiterated his own aversions.

10. Both the parties have filed oral as well as documentary evidence.

11. Union has filed photocopy of order of SDM. This photocopy is not legible. Union has also filed other documents.

12. Opposite party has also filed number of documents. I would narrate the relevant documents during discussions. Union has adduced W.W.1 Sri Satya Narain Rai, W.W.2 Sri Mohd. Isha Ansari and W.W.3 Murhu Pal. Opposite party has adduced Sri K. N. Mishra who is Senior Personnel Administrative Officer as M. W. 1.

13. Heard the arguments at length and perused the record and evidence.

14. As I have already stated that the reference regarding the transfer has been withdrawn, therefore, the evidence of W.W.1 and 2 is not material in deciding the issue deduction of penal rent.

15. During arguments the A.R. of the claimant on behalf of Sri Rai based his arguments on standing orders relating to the Barauni-Kanpur Pipeline, which is a creation of Indian Oil Corporation Limited. He has drawn my attention to the clause 26 which provides Colony Tenancy Term. It provides that a workman who is provided with a quarter in company's housing colony shall conform to the tenancy terms and conditions as in force from time to time and shall not be finally paid off unless he gives vacant and peaceful possession of the company's quarter that may be occupied by him provided however, the workman concerned will not be required to vacate his quarters if his case is pending before any authority court under the Industrial Disputes Act, 1947. Pendency of any legal proceeding before any other authority or court will not be a ground for his continuance in the quarters.

16. Opposite party has contended that the claimant Sri Rai has never applied at Kanpur for letting an accommodation. When the claimant was examined on this point he stated that he has moved an application before the officials but he has not filed any copy of such application which was moved by him. Opposite party contended that he was permanently transferred to Kanpur to his original posting and he was supposed to vacate the quarter at Barauni. Claimant has also not written in his pleading that he has moved an application for allotment of quarter at Kanpur. Therefore, this fact of the claimant does not appear to be true that he was not provided any accommodation at Kanpur so he did not vacate the quarter at Barauni.

17. During arguments claimant's authorized representative emphasized that under clause 26 of the Standing Orders, when any litigation is pending before any authority or court under the Industrial Disputes Act, 1947, the workman concern will not be required to vacate the quarters. Opposite party contended that when the workman was reinstated and transferred to Kanpur no case was pending under the I.D. Act, 1947. I have gone through the pleadings of the claimant on this point and inquired from the workers representative whether there is any pleading in this respect, but he has not been able to show. Even the workman has specifically mentioned in Para 36 of his claim statement that in the Panta High Court (Ranchi Bench) the case has been finally decided in favour of the workman.

18. Opposite party has placed reliance upon the terms and conditions which regulate the tenancy of the quarter in between the parties which is paper Ext.M-35 genuineness of this paper has not been disputed by the claimant.

19. Opposite party has drawn my attention towards the clauses mentioned in the terms that is 2.6.0, 2.6.1, 2.8.0, 2.8.1, 2.24.0, 2.25.0, 2.27.4.

20. The clause 2.27.4 provides the period that officer may be permitted to retain company's accommodation at the previous place of posting shall be restricted to only one year. In compelling reasons however, extension by another year may be permitted by the Director on the recommendation of G. M. concerned. Under no circumstances shall the permission be granted beyond the maximum period of two years except in cases of self leased accommodation.

21. Opposite party stated that the claimant has enjoyed and been permitted to avail the maximum period of two years to stay in the quarter.

22. Clause 2.30.0 provides for rent for transit accommodation. Clause 2.25.0 provides recovery of rent overstay how to be made. It is argued by the opposite party that there is a statutory provision of two years and this provision cannot be violated even by the Director. He ceased to be functus officio.

23. I have given due thoughts to all the documents filed by the claimant ranging from Ext.W.1 to Ext.W-27.

24. Considering the facts and circumstances of the case there does not appear to be any malafide action of the management. When an employee has been transferred permanently normally rules provides retention of the official accommodation only for two months. Even this cannot be a sole ground that if he does not get accommodation at Kanpur he will not vacate the quarter at Barauni, because he was permanently transferred, as of right he could not retain the quarter at Barauni beyond the permissibility period given by the management. Therefore, there is no force in the contention of the authorized representative for the claimant and he has not been able to prove the case successfully.

25. Therefore, the second part of the reference is decided against the workman and in favour of the opposite party holding that he is not entitled for any relief.

Dated: 31-3-10

RAM PARKASH, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का.आ. 1249-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओ. एन.जी.सी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 519/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-30012/5-ए/94-आईआर (विविध)(सी-1)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S.O. 1249—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 519/2005) of the Central Government Industrial Tribunal/ Labour Court, No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of O. N. G. C. and their workmen, which was received by the Central Government on 16-4-10.

[No. L-30012/5-A/94-IR(Misc.) (C-I)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case ID No. 519/2005. Old ID 24/96

The General Secretary, NZ, Oil and Gas Workers Union,
C/o 36-A, Ghandinagar, Jammu - 180004

... Applicant

Versus

The Regional Director, O. N. G. C., 18-A, Raid Head
Complex, Ghandinagar - 180004

... Respondent

APPEARANCES

For the Workman : Shri Deipa Asdhir Dubey

For the Management : Shri Paul S. Saini

AWARD

Passed on : 6-4-10

This unfortunate industrial dispute and reference came before me for award after 14 years. The reference received by this Tribunal in the year 1996. Reasons for in action may be many. The prominent reason seems to be bifurcation of the similar files to the CGIT-cum-LC-II. This file has been recently received by this Tribunal from Court No. II and taken for adjudication. Whatever this Tribunal at this stage can do is the sincere regret from the parties for denying timely justice.

Government of India vide notification No. L -30012/5-A/94-IR (Misc.) (C-I), dated 4-3-1996 by exercising its powers under Section 10 of the Industrial Disputes Act, (the Act in short) has referred the following industrial dispute for adjudication to this Tribunal :—

“Whether the management of O.N.G.C. is justified in terminating the services of Shri Bodh Raj, Contingent Wireless Operator. w.e.f. 31-5-1993? If not, to what relief is the workman entitled?”

After receiving the reference, parties were informed. Parties appeared and filed their respective pleadings. The claim of the workman in nut shell is that he was appointed as Contingent Wireless Operator in the year 1996 by the management of Oil and Natural Gas Commission. His appointment was through Zila Sanik Welfare Office, Jammu. He performed his duties honestly and dedicatedly. On his working he was ensured by the management for regularization of his services. Vacancies were also created by the Head Office but the services of the workman were not regularized. The workman was retrenched from the services in 1991. The workman raised the industrial dispute. In the industrial dispute Assistant Labour Commissioner conducted the conciliation proceedings. A settlement was entertained into in between the parties in which Oil and Natural Gas Commission agreed to provide the services of the workman in future. Accordingly, the workman was reinstated. But his services were again unlawfully terminated on 26-5-93. The workman raised the industrial dispute again and on failure of conciliation report, this reference.

The management of respondent appeared and opposed the claim petition by filing written statement. It is contended by the management that workman was engaged as Wireless Operator in the year 1996 by the management through Zila Sanik Welfare Office, Jammu. The management admitted that four posts were sanctioned in the year 1986 for the Wireless Operator but no posts for wireless operator was filled in through regular appointment for want of sanction order. It is also admitted that in matter of regular appointments, the priority and preference was given by the management as per circular letter to the candidates who were already working with the management. Due to the improvement in telecommunication system the work of telecommunication was given to the private agencies and on account of non-requiring the services of the workman his services were retrenched in the year 1991 according to the law and retrenchment compensation was paid. Before retrenchment the offer was given to the workman to join another site in U.P. and on his refusal to join the services in Sahjanpur, U.P. his services were retrenched with payment of lawful termination dues. It was further admitted by the management that workman raised the industrial dispute and before the conciliation officer he requested to join the plant in U.P. and on the basis of settlement he was permitted to join the plant afresh as no work was left behind in U.P in 1993 and his services were again retrenched and he was afforded to pay retrenchment compensation which he refused to receive and raised this industrial dispute. It has also been contended by the management that the services of other contingent Wireless Operators were terminated. They also raised the industrial dispute but their retrenchment has upheld by the Hon'ble the Supreme Court.

Both of the parties were afforded the opportunity for adducing evidence. Evidence of the parties was recorded. All the relevant document are on record. I have heard the

parties at length and perused the entire materials on record. It is admitted that workman was engaged as contingent Wireless Operators and he worked up to the satisfaction of the management. It is also established before this Tribunal that for improvement in science and technology, particularly in communication system in Oil and Natural Gas Commission some advanced measures was initiated and for that purpose services of private agencies on contract were taken. Accordingly, the contingent wireless operators were in surplus. Their services were retrenched according to law. It is also clear from the perusal of the materials on record that before retrenching the services in the year 1991, the workman was offered by the management to work in Sahjanpur, U.P., where the similar communication system was functioning. On refusal of the workman to work in Sahjanpur, U.P. his services were terminated on payment of wages and other lawful terminal dues. Thereafter, on the basis of the compromise between the parties in the presence of the conciliation officer, the workman agreed to work in Sahjanpur Branch and accordingly, his services were reinstated. The workman has not denied this fact that services of other contingent wireless operators were terminated according to law that termination has been upheld up to Hon'ble the Supreme Court. It is true that order of the Hon'ble Supreme Court upholding the termination of services of the contingent wireless operator is not on record but it is a fact which has not been denied by the workman. In spite of it the legality of the termination of workman from the services in the year 1993 has to be evaluated on the basis of the facts and circumstances of this case and facts pleaded and evidence adduced. The work at Sahjanpur was over and accordingly the services of the workman were retrenched as per law. He refused to receive the retrenchment compensation but I am unable to trace out any document on record which proves the attempt of management for payment of retrenchment compensation. The management has stated that staff was surplus and other contingent wireless operators were retrenched, hence even if the workman has completed 240 days of work in the preceding year from the date of his termination the services were likely to be retrenched under the circumstances prevailing in the management office.

MWI makes it clear that reasons provided for the services to the workman at Sahjanpur, U.P. were mentioned in this letter. It also makes clear that workman was afforded and given the opportunity to work in Sahjanpur, U. P. After this letter dated 27-11-91 the services of the workman were retrenched. I am unable to trace out any such document for the year 1993 which proves that services of the workman were terminated with or without payment of any retrenchment compensation. It is contended by the management that retrenchment compensation was offered but there is no iota of evidence on record which prove what compensation was offered to the workman and he refused to receive the same. Accordingly, I am of the view that services of the workman were retrenched without

payment of retrenchment compensation which make the termination void.

Under such circumstances, where termination of any workman is declared to be void on account of non payment of retrenchment compensation the reinstatement of the workman should not casually be ordered. Moreover, workman is no more and order of reinstatement is not possible. Where it has also come to the notice of the Tribunal that staff was surplus retrenchment was lawfully made but for the payment of retrenchment compensation, and no posts are lying vacant for providing the work or services to the workman, the payment of reasonable compensation is only remedy left for the workman. It has become the recent trend in the service jurisprudence that reinstatement should not be ordered casually. It should be on the basis of specific circumstances and the circumstances should speak in the order of reinstatement passed by the Tribunal. In the present case before me it is established that contingent wireless operators were surplus and attempt has made by the management to retrench the services of the workman lawfully. It has also come before this Tribunal that no work was left behind on introducing new system for carrying out the work of wireless operators. For the work of communication contract system was introduced as per the policy of management and the policy cannot be questioned before this Tribunal. Accordingly, I am of the view that because of the surplus staff, the services of contingent wireless operators were retrenched. This retrenchment was not lawful because of non-payment of lawful terminal dues.

Accordingly, reasonable compensation is the appropriate remedy for the workman. The compensation should be awarded on the basis of reasonable criteria. The facts to be considered as a reasonable criteria are the wages which the workman was getting at the time of the termination, one month wages in lieu of notice, lawful terminal dues, interest thereon, depreciation in the money, inflation and index cost factor. Considering all the factors and the period workman has served with the management. I am view that a compensation of Rs. 1,50,000 (one lakh fifty thousand only) will meet the ends of justice. Accordingly, the management is directed to pay/deposit the above mentioned compensation within one month from the date of publication of the award. Thus, on account of non-proving the fact that a retrenchment compensation was offered to the workman by the management in the year 1993, I am directing the management to pay a compensation of Rs. 1,50,000 (one lakh fifty thousand only) within one month from the date of publication of this award. As stated earlier, workman is no more. His legal representatives have been brought on record. They will be entitled to receive the compensation. Apart from it, the workman is not entitled for any relief. Central Government be approached for publication of award and thereafter file be consigned to record room.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का.आ.1250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं ई. सी.एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 43/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-04-2010 को प्राप्त हुआ था।

[सं. एल-22012/227/2005-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S.O. 1250.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 43/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 16-04-2010.

[No. L-22012/227/2005-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

IN THE COURT OF CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT, ASANSOL

Reference No. 43/ITC/2006

Management of Dhemomain Group of Mines of ECL

Vs.

Chief Org. Secretary, Koyala mazdoor Congress,
Neamatpur

SETTLEMENT IN LOK ADALAT

HELD ON 11TH DECEMBER, 2009 AT KAJORA
GUEST HOUSE

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The form 'H' containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

MANORANJAN PATTNAIK, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का.आ.1251.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं ई. सी.एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 24/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-04-2010 को प्राप्त हुआ था।

[सं. एल-22012/127/2005-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S.O.1251.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 16-04-2010.

[No. L-22012/127/2005-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

IN THE COURT OF CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT, ASANSOL

Reference No. 24/ITC/2006

Management of S. S. I. Unit of Ningha Colliery of ECL

Vs.

General Secretary, Koyala Mazdoor Congress, G. T.
Road, Asansol

SETTLEMENT IN LOK ADALAT

HELD ON 11TH DECEMBER, 2009 AT KAJORA
GUEST HOUSE

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The form 'H' containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

MANORANJAN PATTNAIK, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का.आ.1252.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं एफ. सी. आई. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, राखनऊ के पंचाट (संदर्भ संख्या 59/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-04-2010 को प्राप्त हुआ था।

[सं. एल-22012/137/2000-आई आर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S.O.1252.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.. 59/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI, and their workman, which was received by the Central Government on 16-04-2010.

[No. L-22012/137/2000-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT

N. K. Purohit, Presiding Officer

I. D. No. 59/2001

Ref. No. L-22012/137/2000-IR (C-II) dated : 08-03-2001

BETWEEN

The State Secretary,
Bhartiya Khadya Nigam Karmchari Sangh
5-6, Habibullah Estate, Hazratganj
Lucknow
(Espousing case of Shri Iradat Ali)

And

The Sr. Regional Manager
Food Corporation of India
5-6, Habibullah Estate, Hazratganj
Lucknow

AWARD

31-03-2010

1. By order No. L-22012/137/2000-IR (C-II) dated : 08-03-2001 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between State Secretary, Bhartiya Khadya Nigam Karmchari Sangh, 5-6, Habibullah Estate, Hazratganj, Lucknow (Espousing case of Shri Iradat Ali) and the Sr. Regional Manager, Food Corporation of India, 5-6, Habibullah Estate, Hazratganj, Lucknow for adjudication.

2. The reference under adjudication is ;

“Whether the action of the Sr. Regional Manager, FCI, Lucknow in imposing penalty upon Sh. Iradat Ali, A.G. II (D) vide order dated 29-11-1997 and rejecting appeal by zonal manager (North), FCI, New Delhi vide order dated 15-9-1999 were legal and

justified? If not, to what relief the workman is entitled to?”

3. In brief, case of the union is that opposite party No. 1 had issued illegal charge sheet vide memo dated 02-08-95 upon the workman, Iradat Ali, containing 13 article of charges and Shri Harphool Singh was appointed Inquiry Officer, who submitted his report dated 02-06-97; wherein he found charges under Article 1 to 4, 7, 10 to 13 partly proved and charges under Article 5 & 6 as proved and charges under Article 8 & 9 not found proved. The union has alleged that the inquiry was not conducted in accordance with the law and opportunity of hearing was not given to the workman. The documents required for cross-examination were not provided and the findings of the inquiry Officer are contrary to records or contrary to the conclusions. Findings in the inquiry report are perverse in law and facts and are liable to be set aside.

4. The inquiry report was served upon the workman on 02-07-97. The reply to the said report was filed on 30-04-97; wherein the workman raised number of issues but the same were not considered by the opposite party No.1 nor given any reason for not considering representations of the workman. It is alleged that the opposite party No. 1 has not applied mind nor gone through evidence on the record and passed impugned order dated 29-11-99 and imposed a penalty of ‘reversion from A.G. - II Depot to A.G. -III (Depot)., his pay would be fixed at the beginning of the scale of A.G. -III Depot; and he would be junior most A. G. -III depot in the list of seniority as on date for promotion purposes.’ The workman moved an appeal against aforesaid impugned order before the competent authority. The union has alleged that the Appellate Authority has not mentioned the reason for not accepting the contentions of the appellant, workman. The Appellate Authority has simply reduced the quantum of penalty which was substituted as “Reduction to minimum time scale of pay of A. G. - II (Depot) from a period of 5 years after expiry of penalty period he will discharge the reduced scale of pay of A. G.-II Depot.” Thus, the union has prayed to set aside impugned orders dated 29-11-97, passed by Sr. Regional Manager and 15-9-99, passed by Zonal Manager, FCI, New Delhi.

5. The FCI in its written statement has denied the allegations made by the union. The corporation has submitted that full opportunity was given to the workman and the inquiry was conducted in accordance with law and report is based on the facts and evidence. The Disciplinary Authority also considered the inquiry report and representations submitted by the workman and speaking order dated 29-11-97 has been passed. The Appellate Authority has also considered the contentions raise by the workman and after due consideration, reduced the quantum of penalty vide order dated 15-09-99. It is also pertinent to mention that review petition was also moved

by the workman under Regulation 74 of FCI (Staff) Regulations 1971, which was rejected vide order dated 15-3-2004 (C-37). Thus, the workman has exhausted the alternate remedy of review during the pendency of the reference in additional plea, it is pleaded that the workman has not exhausted the alternate remedy of review provided under regulation 74 of FCI (Staff) regulations 1971 and on this the claim of the workman is liable to be rejected.

6. The workman's union has filed its rejoinder whereby it has only reiterated its averments in the statement of claim and has not introduced any new fact.

7. On the basis of pleadings of both sides following preliminary issues were framed on 18-10-2001:

1. Whether the domestic enquiry is fair and proper; and
2. Whether the findings of the enquiry officer culminating into penalty order dated 29-11-97 and appellate order dated 15-09-99 suffer with the vice of perversity ?

8. Upon perusal of proceedings of the case, it reveals that both the sides have filed documents in support of their respective cases. Opportunity to lead evidence in respect of preliminary issues was given, but both the side did not adduce any oral evidence in support of respective case and the case was listed for arguments on the preliminary issues.

9. As regards issue No. 1 whether the domestic enquiry is fair and proper the workman's union has alleged in the statement of claim that opportunity of hearing was not given, documents requested for cross-examination were not provided and opportunity of cross-examination was also not provided but the workman has not been examined in support of above allegations. Further, upon perusal of the proceedings of enquiry it reveals that the FCI has examined five management witness and all of them have been cross-examined by the defence representative. It further reveals that no request was made by the defence side for providing any document or for producing any defence witness. The enquiry proceedings dated 14-02-97 reveals that after prosecution closed its evidence, the defence side also closed its evidence without adducing any oral evidence. It further reveals that the workman and his defence representative have participated in the enquiry proceedings. In absence of any evidence mere pleadings for alleged allegations are no substitute for proof. Thus, the contentions that the enquiry conducted was not fair and proper and in violation of principles of natural justice are not sustainable.

10. Now the question arises for consideration is whether finding of inquiry officer, culminating into penalty order dated 29-11-97 and appellate order dated 15-09-99 suffer with the vice of perversity ?

11. It has been alleged in the charge under article 1 that the workman while posted as AG II (D) at CAP, Bisalpur has failed to maintain absolute integrity and devotion as unbecoming of an FCI employee and caused financial loss of Rs. 11,00,000. In charge under article 1, it is alleged that the workman mis-appropriated 1232 bags of wheat at CAP Bisalpur, pertaining to Rabi 1993- 94 in connivance with the then Depot Incharge, Shri M. G. Verma, AG II (D), Sri Rajendera Singh, AG III (D) and Shri P.K. Saxena, AG III (D).

12. The Inquiry Officer, on the basis of his finding on the inquiry report for the charge under Article I, has found in his conclusion the said charge as partially proved. The learned representative on behalf of the union has contended that Inquiry Officer has mentioned in his report that the Master Ledger (Ex. P. 8) was maintained by Shri M. G. Verma, AG II (D), the Depot Incharge, which was not complete. It is evident from Article of charge No. 7 that records of Depot were incomplete. On the basis of Master Ledger, ascertaining shortage by the PV team is wrong. He has further contended that the District Manager, FCI, Bareilly has informed the entire position to Sr. RM, FCI, Lucknow by means of DO dated 01-05-94; wherein it has been specifically mentioned that there was a shortage of 6 bags of wheat for which he directed the workman to deposit the cost of 6 bags wheat and which was deposited by means of receipt No. 122 dated 05-07-94. The penalty of recovery of 6 bags wheat is a minor penalty which has been imposed by the District Manager, as such charge sheet is not maintainable. The Inquiry Officer has not given any finding on the said letter dated 01-05-94: He has also contended that the Inquiry Officer has found the charge partially proved but failed to specify which part of the charge is proved. Thus, findings are vague. Further, he has proved that the workman has not made any complaint against the assistants as such entire team is responsible, but this was not the charge. Whereas the learned representative on behalf of the corporation has urged that in the month of March, 94 a zonal PV team made inspection of the Depot and found shortage of 1232 bags of wheat on 100% counting. As regards contentions raised by learned representative on behalf of the union written arguments., submitted by learned representative on behalf of the FCI, are silent.

13. It is evident from records that the charge sheet was issued on 02-08-99 and entire position as regards shortage of 1232 bages was already given by the District Manager, Bareilly on 01-05-94 vide its letter dated 01-05-94. According to the letter, there was only shortage of 6bags for which the workman was directed to deposit the cost of 6 bags and amount of the 6 bags of wheat was deposited on 05-07-94 and this position was intimated by the District Manager, Bareilly to the Regional Manager, , Lucknow vide letter dated 6-7-94, the copy of which has been filed along with the list of documents by the Corporation.

According to the Regulation 54 (iii) of Staff Regulations, 1971, the recovery is minor penalty which can be imposed by District Manager in accordance with Appendix II of Staff Regulations 1971. Thus, the contention raised by the learned representative on behalf of the union that after recovery of the amount of 6 bags by the Corporation, charge sheet on the same issue is not maintainable, has substance. The Inquiry Officer has observed in his findings that the figures were taken from Master Ledger and no other document of Depot was considered nor examined whereas Master Ledger was maintained by Shri M.G. Verma, Depot Incharge. He has further observed that records of unit were not complete then how could the figures from incomplete records be reconciled. He has also mentioned that after making necessary corrections there was shortage of only 6 bags and the District Manager also recovered the cost of 6 bags from the workman and the District Manager also observed that due to non completion of records of FSD Bisalpur PV team observed the shortage of 1232 bags whereas actual shortage was only 6 bags.

14. The Inquiry Officer in his conclusion has also observed "it is also a fact that at FSD, Bisalpur there was shortage of staff and work distributed among the staff was not complied and the records were not maintained properly for which the Charged Officer has not made any complaint against his assistant as such the entire team is responsible including Shri Ishrat Ali (CO)." As such he found the charge under Article I as partially proved. It is evident from the conclusion drawn by the Inquiry Officer that there is no element of misappropriation of 1232 bags nor any element of connivance with others then the charge of misappropriation 1232 bags with connivance of other has not been found proved. The Inquiry Officer has concluded that the workman has not made any complaint against assistant thus, entire team, including the workman, is responsible, but there is no such allegation in charge under Article I, therefore, the Inquiry Officer cannot travel beyond the charge. Further, he has not specifically mentioned what allegation in the charge has been found proved on the basis of which he has concluded that charge against the workman has been proved partially. Accordingly, the findings on charge under article I are perverse.

15. It is alleged in charge under Article 2 of the charge that the workman misappropriated the storage grain in wheat stocks stored at CAP, Bisalpur from 21-04-93 to September, 1993 and remained in storage which were dispatched from January, 1994 quantifying storage gain of 1500 quintals costing Rs. 6,00,000 in connivance with Shri M. G. Verma, Depot Incharge, Shri Rajendera Singh, AG-III (D) and Shri P.K. Saxena, AG-III (D). In statement of imputations of misconduct, it is alleged that at FSD, Pilibhit which is only 38 Km. away from FSD, Bisalpur following storage gain in wheat stocks at open plinth have been found during the period of storage from May, 1993 to March, 1994 where total transaction was of 298161 bags = 283565.94.000 under taken

in open plinth. There was an average gain of 0.47% as already occurred at Pilibhit was estimated in respect of CAP, Bisalpur and with that the total approximate gain at Bisalpur worked out to 1560 quintals. This gain has not been taken at Bisalpur. thus, approximately 1560 quintals of wheat amounting to Rs. 6,39,600 was misappropriated by the workman for his personal gain.

16. The Inquiry Officer in his finding has observed that at FSD, Pilibhit there is gain of 0.47% and in this respect relied this gain on the statement of OA (D) Pilibhit and no other specific documents were produced by the prosecution during the inquiry. He has further observed that there is no documentary proof to prove his innocence that in spite of his timely best efforts, the loss were occurred.

17. Thus, it is evident from the findings that Inquiry Officer has given his findings on the basis that the workman has not produced any evidence that losses were due to short comings in Depot. It is well settled that burden of proving charges lies on the Department and the employee is not required to prove his innocence. Except statement of storage gain of Pilibhit Depot., No evidence has been produced to prove the alleged charge of misappropriation. Further the Inquiry Officer has found the alleged charge partly proved but he has failed to specify how much part of the charge is found proved, as such findings are vague and are based on presumption and assumptions only.

18. It has been alleged in the charge under article 3 that the workman misappropriated 134 bags of wheat = 168.77 Quintals, excess issued to private parties from CAP, Bisalpur from 25-01-94 to 04-03-94, in connivance with Shri M. G. Verma, Shri Rajendera Singh, AG-III (D) and Shri P.K. Saxena AG-III (D). In statement of misconduct it is mention that excess wheat was issued from CAP storage under the charge of workman for his personal gains, which caused financial loss to the Corporation to the tune of Rs 69,883.90. The Inquiry Officer observed in his finding that the plea of defence cannot be ruled out that due to operational difficulties and weighbridge was 3 Km. away from the Depot, this excess stocks was issued but there was no malafide intention on this issue on the part of the workman. He has also observed that AG III (D) and staff posted at weighbridge was mainly responsible for this negligence. He has held the workman responsible as he has failed to supervise the operation.

19. Thus, there was no charge of lack of supervision against the workman, the Inquiry Officer cannot prove the charge which was not in the charge sheet. In 2006 SCC (L&S) 919 M.B. Bijlani vs. Uol, Hon'ble Apex Court has observed that Inquiry Officer cannot inquire into the allegations with which the delinquent officer has not been charged with.

20. Since there was no charge of lack of supervision against the workman, the findings of the Inquiry Officer

against the workman in this regard is beyond the charge, therefore, not tenable.

21. Alleged misconduct in the charge under article 4 is that the workman misappropriated 305 bags = 289.75 Quintals wheat costing Rs. 1,18,797.50 during issued to private parties under open sale on 4-3-94, in connivance with Shri M.G. Verma, Shri Rajendra Singh, AG III (D) and Shri P.K. Saxena AG III (D).

22. The Inquiry Officer has observed in his findings that the workman had already made complaint that gate pass book no. 528 was missing and the responsibility of misappropriation squarely lies upon Shri M. G. Verma, Shri Rajendra Singh, AG III (D) and Shri P.K. Saxena AG III (D). He has further observed that since entire stock was stored in open and the custodian cannot be squarely responsible when his assistant and supervisory officer conducted the operation separately, but the workman was custodian of stock cannot be absolved from the responsibility. Thus, the Inquiry Officer has not given any finding as regard alleged misconduct of misappropriation. He has also not given findings that there was any connivance with other employees of the FCI for alleged misappropriation. The Inquiry Officer has concluded that the charge against the workman is partly proved. He has found partly proved that charge with which the workman has not been charged with, therefore, finding on such charge is not sustainable.

23. It has been alleged in the charge under article 5 that the workman made manipulations in records for showing fictitious dispatches to Rail Head on 14-12-93 by way of making fictitious gate passes no. 700/43 to 45 and 18-45 to 50 and also made fictitious entries in the issue Register of FSD, Baisalpur showing a fictitious dispatch of 1140 bags = 1079.96 Quintals to Rail Head in connivance with Shri Rajendra Singh, AG III (D)

24. The learned representative on behalf of the workman has contended that aforesaid findings clearly shows ill motive of Shri Rajendra Singh to issue 10 gate passes in absence of the workman. Since stock has not been reduced from various registers of Depot, therefore, there is no ill motive of the workman nor there could be any connivance of the workman with Shri Rajendra Singh. He has further contended that it is evident from entire charge sheet and finding that there was no shortages of 1140 bags from the Depot as such question of their adjustment does not arise. the above contentions find support from the following observations of the Inquiry Officer.

"From the above, it has observed that there was no entry in the master ledger, shed wise register, stack wise registers and alleged issues of 1140 bags have not been reduced from the stocks. It is the mistake on the part of Shri Rajendra Singh AG III (D), who attached with Charged Officer. His ill motive to issue the 10 gate passes in the absence of Shri Iradat Ali

and wrongly charge officer made entry of the same in the issued register but the charged officer has not made any effort to make the entries in the other relevant records of the depot and reduce from the stock."

25. Thus, the Inquiry Officer himself has concluded that it was the mistake of Shri Rajendra Singh, AG III who was attached with charge officer and for alleged fictitious entries he has attributed responsibility upon Shri Rajendra Singh who with ill motive issued 10 gate passes and made entries in the issued register. Thus, it is evident from above that the workman had not manipulated alleged records. Therefore, finding of the enquiry officer is contrary to his conclusions in this regard.

26. It has been alleged in the charge under article 6 that the workman prepared bogus stack wise register for CAP, FSD, Baisalpur during 1993-94 and also prepared bogus salvaging and gunny account register of FSD, Baisalpur for 1993-94 for showing fictitious entries of 720 bags wheat, damaged at CAP and subsequently showing fictitious salvaging operations. In this regard the Inquiry Officer in its findings observed as under :

"As regards salvaging operation, it has been observed and also on records that the issues were made in the presence of QC staff but no PWs stated that there were damages only stated that the bags were affected and not grains as such there was no damage."

27. The learned representative on behalf of the workman has argued that findings are perverse and outcome of non-consideration of defence contention. The workman produced letter dated 13-4-94 (Ex/D-9 IA) of District Manager, FCI, Bareilly to Regional Office, Lucknow but the same has not been considered by the Inquiry Officer. The Inquiry Officer has failed to consider that total damage of 431 quintals in total storage of 3,50,000 bags wheat in open storage is very minor.

28. The allegation the charge under article 6 are that the workman prepared bogus stack wise register for CAP FSD Baisalpur and also prepared salvaging and gunny account register but the Inquiry Officer has observed in findings as under :

"It has been observed that the salvaging register (Ex.p.23) has not been authenticated by the Depot Incharge, AG (D) of AG II (QC) except the entries made by the CO and he himself signed on the same. But subsequently the results obtained from the salvaging operations mentioned the register has been taken into Master ledger (Ex. D-6) and the same was seen by the AM (D).

"As regards salvaging operation, it has been observed and also on records that the issues were made in the presence of QC staff but no PWs stated that there were damages only stated that the bags were affected and not

grains as such there was no damage. It is also on record that the samples were drawn and analyzed in the Regional Office, Lab., who declared the same as fit for industrial use, and the presence of 43% FM prove that 720 bags were not received as result of salvaging but these are collection of Kurchan/Sweeping also. But it is not out of place to mentioned here that as per the MIR and SIR of AM (QC) and DM (QC) Ex. P. 49, 50, & 51 and AM(D) reports, there were some damaged grains and same were lying on the plinth of FSD, Bisalpur but not to the extent of 720 bags."

29. It is evident from above observation that the Inquiry Officer has not given any specific finding that the workman prepared bogus stack wise register and salvaging gunny account register. He has also not taken into consideration the letters dated 01-05-1994 (Ex-D/81A) and 13-4-94 (Ex-D/91A) of District Manager, FCI, Bareilly to FCI, Regional Office, Lucknow which fortifies the version of the workman that damaged grain was there and salvaging operation were done by the workman.

30. It has been alleged in the charge under article 07 that the workman did not maintain complete records after November/December, 1993 there by misappropriation done in connivance with depot incharge, Shri P.K. Saxena, AG III (D) at FSD Bisalpur, therefore, it was to be proved that the workman did not completed the records of FSD, Bisalpur, but the Inquiry Officer has not given any specific finding for alleged misconduct or misappropriation. He has admitted in his finding that in view of capacity of Bisalpur depot only two assistants viz. Shri P.K. Saxena and Rajinder Singh, AG-III (D) were provided to the CO to maintain the records; but order were not complied due to shortage of staff and rush of work. He has also admitted that there was shortage of staff. He has also mentioned in findings that charge of rice are not with the CO as the question for preparing the records of rice does not arise in the case of CO and was failure of assistant. He has also observed that it was duty of CO to complete all records related to stocks for which he was the custodian but he failed to do so. But he has not given any finding that record was kept incomplete mala fiedly for misappropriation. Despite this he has found charge partly proved.

31. In the charge under Article 10, it has been alleged that gunny account of FSD Bisalpur reflected many irregularity committed by workman in connivance with Shri P.K. Saxena AG-III (D) who was to maintain gunny account, has not maintained correct accounts. The learned representative on behalf of the workman has pointed out that Inquiry Officer has pointed out in his findings that the gunny account were completed up to 31-12-2003 while the PV team rounded off this entry on 17-3-94 and 24-3-1994 presuming that there was no operations after 31-12-1993 which was not correct. The workman submitted up to date gunny account register (Ex-P/3) which was seen and authenticated by depot incharge. He has further submitted

that as regards 95-C class gunnies shown deposited with FSD Bisalpur by CWC, the same register has not been produced by the prosecution such it is a case of no evidence as regards 95-C class gunnies.

32. The learned representative on behalf of the Corporation has not submitted any argument on this point.

33. The alleged charge was for committing irregularities in connivance with Shri P.K. Saxena, but the Inquiry Officer himself has observed in his findings that the gunny account register Ex-P21 of FSD Bisalpur was found complete up to 30-12-1993. He has also observed that the same is round up by the audit party on 17-3-1994 and CO has submitted the second registers (Ex-P31) gunny accounts registers to the team on 18-04-1994 after making the entries; but he has not considered the defence version that the PV cannot verify the figures of 31-12-1993 on 17-03-1994 and 24-03-1994 as such the PV results are having relevancy. Further, the Inquiry Officer has also observed that 95-C class gunnies registers have not been exhibited during the course of inquiry, no evidence is produced by the prosecution to prove about the shortage. On the basis of above he has concluded that defence has to said any thing on this account but charges were bound to be proved by the prosecution and burden of defence was on the workman. The Inquiry Officer further observed that neither documents nor evidence produced during the course of inquiry by the prosecution to prove about the shortages of 95-C class gunnies except Ex-P6, but the defence has not said any thing on this account, as such, doubt creates in the genuinity of the statement, therefore, the charge is partly proved. But he has not given any finding as regards any specific irregularity committed by the workman in connivance with Shri P.K. Saxena in maintaining the gunny account therefore, the findings on the charge seems to be perverted.

34. In the charge under article 11, it has been alleged that workman has not produced depot records to IA and PV teams in March/April, 1994. The Inquiry Officer himself has observed in his findings in this regard that Ex-P6 (Page-15) that six documents/registers were not produced before the audit party of FSD Bisalpur, but no any where mentioned that the records were called for from the custodian i.e. workman. But he failed to provide the same whereas he was on leave w.e.f. 22-03-1994 to 24-03-1994. her has also observed that it clearly mentioned in Ex-P6 that stack wise shed wise of 92-93 and 93-94 in original of CAP under charge of M.G. Verma and Jaideo Sharma, AG-III (D). There was no evidence on the record that records were called from the workman and he failed to provide the same, therefore, the above charge stands not proved. Despite the Inquiry Officer has found charge partly proved with following observation.

"This gave room to adjust the shortages but for this CO alone cannot be held responsible but Depot

Incharge & Am and other assistants are jointly responsible.”

35. Thus what he has found partly proved was not in charge sheet and misconduct which was alleged in charge sheet has not been found proved.

36. In charge under article 12, it has been alleged that quarterly PV ending December, 1993 and March, 1994 could not be conducted due to mess created by workman in connivance with Shri M.G. Verma, AG II (D), Shri Rajendra Singh, Depot Incharge and Shri P.K. Saxena, AG III (D). The charge itself is very vague. Further, in the imputations of misconduct it has been alleged that records were not complete, therefore, charge is not in consonance with the charge of misconduct.

37. The Inquiry Officer has observed in his findings that Depot Incharge directed Shri P.K. Saxena to complete the records and assist the workman but he did not do so due to heavy rush of work and shortage of staff the orders were not completed with and the records were not completed upto date. Thus, he himself has supported defence version. Further, he also observed as under :

“the plea of defence cannot be ruled out that in case the workman has not provided declaration statement to the PV Officer he could the stocks so that correct PV could be brought on record but PV instead of doing PV has chosen to leave the depot without PV on the ground that the stock declaration statement has not provided to him by the CO whereas the same he get from the Depot Incharge. But he failed to do so.”

38. But he found the charge partly proved on the ground that due to non-completion of record, the statement was not provided by the workman. On one hand he has observed that the PV team could conduct verification and on the other hand he has concluded that in absence of stock declaration statement the PV was not conducted, thus, findings are inconsistent as well as vague.

39. In the charge under article 13, it has been alleged that account of dead stock including polythene covers etc. have not maintained by workmen in connivance with Depot Incharge and Shri P.K. Saxena.

40. The contention of defence was that the duty of completion of records lies upon Shri. P.K. Saxena and quantum of work was much more than allotted to AG-II (D) and prosecution failed to prove the connivance with the depot staff. The Inquiry Officer has observed that record was not completed by Shri. P.K. Saxena; but he has found the charge partly proved on this ground that workman failed to prove his supervisory duty.

41. Thus in view of the above discussion, it is evident that the Inquiry Officer's findings are vague and conclusions given are inconsistent with the findings.

Further, he has also travelled beyond the charges and has found the workman guilty for those acts for which he was not charge sheeted. Though he has mentioned points raised by defence but he has not given findings with reasons on the contentions raised by the workman and some of the findings are based on presumptions and assumptions. As such, findings are non-reasoned also, therefore, findings of Inquiry Officer are perverse and issue no 2 is decided against the opposite party.

42. The Inquiry Officer has not given any finding in any charge that the workman actively connived with Rajinder Singh of Shri. P.K. Saxena in arriving misappropriation in stocks but the Disciplinary Authority in its impugned order dated 29-11-1997 has given such findings. The Disciplinary Authority has failed to consider that no allegation of misappropriation has been proved in the enquiry, therefore, there is substance in the contention of learned representative of the workman's union that this amounts to disagreement with the findings of Inquiry Officer. Similarly, in inquiry there is no finding that workman malafiedly did not complete the record whereas the Disciplinary Authority has observed that the workman knowingly to hide the misappropriation of stocks did not complete the records but no show cause notice for disagreement with finding of Inquiry Office was given before imposing punishment upon the workman. The Appellate Authority has also not considered the contentions raised by the workman in appeal, though the contentions have been mentioned in the appellate order. Although the Appellate has modified the penalty order passed by Disiplinary Authority and has concluded that the Inquiry Officer after assessing the circumstances brought out by prosecution and defence had concluded that the charge is partly proved against the appellant. It gives the impression that defence version has some weight and deserves relief. But he has not recorded any specific finding or observation as regards crucial contentions raised by the workman in his appeal.

43. Thus, in view of above discussions, the impugned of Sr.Regional Manager, FCI, Lucknow dated 29-11-97 imposing penalty upon the workman and order dated 15-9-1999 of Zonal Manager (North) FCI, New Delhi, rejecting the appeal of the workman are not justified and resultantly above orders are set aside.

44. The reference under adjudication be answered accordingly.

N. K. PUROHIT, Presiding Officer

Lucknow, 31-1-2010.

नई दिल्ली, 16 अप्रैल, 2010

का.आ.1253.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं बी. बी. एम. बी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के

बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 1 चण्डीगढ़ के पंचाट (संदर्भ संख्या 73/2002 और 75/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-04-2010 को प्राप्त हुआ था।

[सं. एल-23012/11/2001-आई आर (सी-II)]

[सं. एल-23012/15/2001-आई आर (सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S.O.1253.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.. 73/2002&75/2002) of the Central Government Industrial Tribunal-cum-Labour Court No.-1 Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BBMB and their workmen, which was received by the Central Government on 16-04-2010.

[No. L-23012/11/2001-IR (C-II)]

[No. L-23012/15/2001-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRIGYANENDRAKUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case I D No.73/2002 and 75/2002

(1) Shri Harpreet Singh C/o Shri R.K.Singh Parmar, 211-L. Brari, P.O. Partap Nagar, Nangal Dam, Ropar.

(2) Shri Sarwan Singh C/o Shri R.K.Singh Parmar, 211-L. Brari, P.O. Partap Nagar, Nangal Dam, Ropar.

...Applicants

Versus

The Chief Engineer (Power Wing) Generation, BBMB, Nangal Township, Ropar.

...Respondent

APPEARANCES

For the workman : Shri R. K. Singh Parmar.

For the Management : Shri N. K. Zakhmi.

Award

Passed on:- 6-4-10

This award shall disposed off following two industrial disputes and references which are as follows:-

(1) I D No. 73/2002, Ref. No. 23012/11/2001-IR(CM-II), dated 30-4-2002, Shri Harpreet Singh Vs. BBMB.

(2) I D No. 75/2002, Ref. No. 23012/15/2001 - (R(CM-II), dated 30-4-2002, Shri Sarwan Singh Vs BBMB.

The references referred by the Central Government in above mentioned two industrial disputes are as follows:-

(1) I D No.73/2002, Whether the action of the Chief Engineer (Power Wing), Generation, BBMB Nangal Township Roper in terminating the service of Shri Harpreet Singh S/o Shri Jasbir Singh w.e.f. 28-02-1999 is legal and justified? If not, to what relief the workman is entitled to ?”

(2) ID no. 75/2002, whether the action of the Chief Engineer (Power Wing), Generation, BBMB Nangal Township Ropar in terminating the service of Shri Sarwan Singh S/o Shri Tarpal Singh w.e.f 22-11-98 is legal and justified? If not, to what relief the workman is entitled to ?”

Parties were afforded the opportunity for filing the pleadings. Pleadings were filed. On perusal of the pleadings of the parties, it is evident that main issue before this Tribunal for adjudication is whether providing the work to the workman on contract for specific period several times even after the work was available continuously amounted to unlawful labour practice?

In both of the references workman have claimed that they were appointed on contract firstly for six months thereafter, this period was extended twice after a gap of two days each. Such acts type of management amounted to unlawful labour practice and workman has claimed for their reinstatement into the services along with consequential benefits. In ID No.75/02 Shri Sarwan Singh has claimed to work as Driver, whereas, in ID no.73/2002 Shri Harpreet Singh has claimed to work as Fitter. The nature of appointment of both of the workman was same as contractual. The contractual appointment and terms and conditions mentioned in the appointment letter are not denied.

The management has contended and denied the claim of the workman by filing written statement. It was contended by the management that appointment was for specific term on contract and on expiry of the term of the contract the services of the workman automatically terminated and such termination does not amounted to retrenchment. It has also been denied by the management that any of the workman has completed 240 days of work in the preceding year from the date of his termination for getting any relief under the provisions of Industrial Disputes Act.

Parties were afforded the opportunity for adducing evidence. Evidence was recorded. All the materials and documents were also filed. The parties were heard at length. On perusal of the materials on record, it is evident that initial appointment of both of the workman was contractual for a period of six months subject to the other conditions. The other conditions were that their services were temporary and could be terminated at any time. Their

services were also likely to be terminated on regular/adhoc appointment to the post as per rules. Thus, the appointment letter itself speaks that appointment of every workman was contractual for a specific period which was liable to be terminated even before expiry of that period if regular incumbents were appointed. On expiry of six months this appointment was extended for further six months on the basis of same terms and conditions. The appointment was further extended for further six months and expiry of further extended period the service of workman were terminated. It is not the contention of the management that on expiry of third term work cease to exists. There is no iota of evidence on record to prove that the same work which the workman was discharging was available. No regular incumbent were appointed. Thus, in view of the law laid down by Hon'ble Apex Court in 2006 AIR SCW2979, Haryana State Electronics Development Corporation Ltd. V/s. Mamni, termination of workman was bad in law. Hon'ble the Apex Court in para No. 9 of the judgement held as under :—

“The respondent was appointed from time to time. Her services used to be terminated on the expiry of 89 days on regular basis. However, it is noticed that she used to be appointed after a gap of one or two days upon completion of each term. Such an action on the part of the Appellant cannot be said to be bona fide. The High Court rejected the contention raised on behalf of the appellant here instating:

It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent workman was repeatedly engaged on 89 days basis. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged, but was to defeat the rights available to him under Section 25-F of the Act. The aforesaid practice at the hands of the Petitioner-management to employ the workman repeatedly after a notional break, clearly falls within the ambit and scope of unfair labour practice.”

Thus, on the basis of the above observation, I am of the view that when the work is regularly available with the management and the management is providing the work on contract for a specific period extended several times on same terms and conditions, this practice is unlawful labour practice because it prevents the workmen to claim lawful rights which can accrue under the provisions of the Act.

Hon'ble the Apex Court in the said judgment has also held that such type of workman cannot be regularized nor afforded the service and, hence, the reasonable compensation is only remedy. Thus, I am of the view that for non-providing the work regularly till the permanent appointment are made and providing the work on contract basis several times where the work is continuously available

is unlawful labour practice and such termination will fall in the definition of retrenchment. No retrenchment compensation was paid to the workman at the time of their retrenchment. Every workman has said to work continuously except the notional breaks which were in between the extension of the contract period. These breaks were also made by the management with a view of prevent the workman for claiming the rights under the provisions of the Act. If entire period is counted both workmen have completed 240 days of work in the preceding year from the date of his termination. As stated earlier, that Hon'ble the Apex Court in the said judgement has also held that reasonable compensation is only remedy in such type of cases, I am of the view that grievances of the workman should be remedied with an amount of reasonable compensation.

The compensation should be awarded on the basis of reasonable criteria. The facts to be considered as a reasonable criteria are the wages which the workmen were getting at the time of the termination, one month wages in lieu of notice, lawful terminal dues, interest thereon, and depreciation in the money, inflation and index cost factor. Considering the above factors and length of service of both of the workman, I am of the view that Rs.75,000 (Seventy five thousand only) will be a reasonable compensation to meet the ends of justice. Considering all above factors and the period the workman has worked with the management and the wages he withdraw at the time of his retrenchment Rs.75,000(seventy five thousand only) each to both of the workman, in my view is a reasonable compensation. Accordingly the management is directed to pay/deposited the above mentioned compensation within one month from the date of publication of the award. If the management pays/deposits the amount within one month from the date of publication of the award, no interest need to be paid, failing which the workman will also be entitled for an interest at the rate of 8 per cent per annum on the amount of compensation from the date of filing the statement of claim till final payment. Accordingly, the reference is answered. Let Central Government be approached for publication of award, and thereafter, file be consigned to record room.

G.K. SHARMA, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का.आ.1254.-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं एल. आर. एस. इन्स्टीट्यूट ऑफ टी. बी. एण्ड अलाइड डिसेस के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2 मुम्बई के पंचाट (संदर्भ संख्या 83/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-04-2010 को प्राप्त हुआ था।

[सं. एल-42012/273/2002-आई आर (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S.O.1254.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 83/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of L.R.S. Institute of T.B. & Allied Diseases and their workmen, received by the Central Government on 16-4-2010.

[No. L-42012/273/2002-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, KARKARDOOMA, DELHI

I. D. No. 83/2003

Date: 19-02-2010

In the matter of dispute between:

Smt. Maitri Bharti.

W/o Shri Ashok Patajoshi,

R/o House No. 127, Plot No. 3,

Sector 10, Rashtrapati & Cabinet

Cooperative Group Housing Society,

Dwarka New Delhi

... Workman

Versus

The Director,

L.S.R. Institute of T.B. &

Allied Diseases,

Sri Aurobindo Marg,

New Delhi

...Management

AWARD

The Central Government, Ministry of Labour vide Order No. L-42012/273/2002 - IR (CM-II) dated 8-5-2003 has referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of L.R.S. Institute of T.B. & Allied Diseases, Ministry of Health and Family Welfare, Govt. of India, New Delhi in terminating the services of Mrs. Maitri Bharti, Ex-Lab. Technician on daily wages with effect from 15-1-2001 is just, fair and legal? If not, to what relief the workman is entitled to and from which date?”

2. The statement of claim was filed by the workman in April 2004. Thereafter the case was adjourned for filing replication and documents. In February 2008 the case was transferred from CGIT-cum-LC-I to CGIT-cum-LC-II. However, since then, none has appeared from the side of the workman in this Court. It is thus evident that the workman is no longer interested in the outcome of this reference.

Under these circumstances, there is no way out except to pass a no-dispute award in this case. Accordingly, a no-dispute award is passed in this case and reference I.D. No. 83/2003 sent by the Central Government vide Order No. L-42012/273/2002-IR (CM-II) dated 8-5-2003 stands disposed off accordingly. Parties will bear their own cost.

Dated: 19-2-2010

SATNAM SINGH, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का.आ.1255.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 9/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-04-2010 को प्राप्त हुआ था।

[सं. एल-22012/83/2005-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S.O.1255.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 9/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. ECL, and their workmen, received by the Central Government on 16-4-2010.

[No. L-22012/83/2005-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

IN THE COURT OF CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT ASANSOL.

Reference No. 9/ITC/2006

Management of Chapui Khas Colliery of ECL.

Versus

Dy. President, Colliery Mazdoor Union (INTUC), G.I. Road, Asansol.

Settlement in Lok Adalat

Held on 11th December, 2009 at Kajora Guest House

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The form 'H' containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

MANORANJAN PATTNAIK, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

New Delhi, the 16th April, 2010

का.आ. 1256.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं ई. सी. एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 44/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-22012/293/2007-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S.O. 1256.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 44/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. ECL, and their workmen, received by the Central Government on 16-4-2010.

[No. L-22012/293/2007-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**IN THE COURT OF CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL**

Reference No. 44/ITC/2008

Management of Satgram Project of ECL,
Versus

General Secretary, Koyala Mazdoor Congress, G.T. Road,
Asansol.

Settlement in Lok Adalat

Held on 11th December, 2009 at Kajora Guest House

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The form 'H' containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

MANORANJAN PATTNAIK, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का. आ. 1257.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 42/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-22012/291/2007-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

S. O. 1257.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 42/2008) of the Central Government Industrial Tribunal, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited and their workmen, received by the Central Government on 16-04-2010.

[No. L-22012/291/2007-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**IN THE COURT OF CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURTS,
ASANSOL**

Reference No. 42/ITC/2008

Management of Satgram Project of ECL

Vs.

General Secretary
Koyala Mazdoor Congress,
G. T. Road,
Asansol.

Settlement in Lok Adalat

Held on 11th December, 2009 at Kajora Guest House

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The form 'H' containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

MANORANJAN PATTNAIK, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का. आ. 1258.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण असनसोल के पंचाट (संदर्भ संख्या 8/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-22012/116/2008-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S. O. 1258.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/2009)

of the Central Government Industrial Tribunal/Labour Court. Asansol as shown in the Annexure in the Industrial Dispute between the management of, M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 16-04-2010.

[F. No. L-22012/116/2008-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

IN THE COURT OF CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,

ASANSOL

Reference No. 8/ITC/2009

Management of Madhavpur Colliery of ECL

Vs.

Genral Secretary,
Koyala Mazdoor Congress,
Asansol.

Settlement in Lok Adalat

Held on 11th December, 2009 at Kajora Guest House

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The form 'H' containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

MANORANJAN PATTNAIK, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का. आ. 1259.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 1/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-22012/97/2007-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S. O. 1259.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.1/2009) of the Central Government Industrial Tribunal/Labour Court, Asansol as shown in the Annexure in the Industrial Dispute

between the management of M/s. Eastern Coalfields Limited, and their workmen, which was received by the Central Government on 16-04-2010.

[No. L-22012/97/2007-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

IN THE COURT OF CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Reference No. 1/ITC/2009

Management of 1 & 2 Incline, Jhanjra Project of ECL,

Vs.

Genral Secretary
Ukhra Colliery Mazdoor Union (INTUC)

Settlement in Lok Adalat

Held on 11th December, 2009 at Kajora Guest House

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The form 'H' containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

MANORANJAN PATTNAIK, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का. आ. 1260.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 28/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-22012/170/2005-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S. O. 1260.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.28/2006) of the Central Government Industrial Tribunal/Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between, management of M/s. Parasea Colliery, M/s. ECL, and their workmen, received by the Central Government on 16-04-2010.

[No. L-22012/170/2005-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**IN THE COURT OF CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL**

Reference No. 28/ITC/2009

Management of Parasea Colliery of ECL

Vs.

President,
Colliery Republic Mazdoor Sabha (BMM) Parasea,
Burdwan.

Settlement in Lok Adalat

Held on 11th December, 2009 at Kajora Guest House

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The form 'H' containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

MANORANJAN PATTNAIK, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का. आ. 1261.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 43/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-22012/292/2007-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S. O. 1261.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.43/2008) of the Central Government Industrial Tribunal/Labour Court, Asansol now as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited, and their workman, received by the Central Government on 16-04-2010.

[No. L-22012/292/2007-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**IN THE COURT OF CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL**

Reference No. 43/ITC/2008

Management of Satgram Project of ECL,

Vs.

General Secretary,
Koyala Mazdoor Congress,
G.T. Road,
Asansol.

Settlement in Lok Adalat

Held on 11th December, 2009 at Kajora Guest House

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The form 'H' containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

MANORANJAN PATTNAIK, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2010

का. आ. 1262.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 9/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-22012/104/2008-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th April, 2010

S. O. 1262.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.9/2009) of the Central Government Industrial Tribunal/Labour Court, Asansol now as shown in the Annexure in the Industrial Dispute between the management of, the M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 16-04-2010.

[No. L-22012/104/2008-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**IN THE COURT OF CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL**

Reference No. 9/ITC/2009

Management of Tilaboni Colliery of ECL,

Vs.

General Secretary,
Ukhra Colliery Mazdoor Union,
Ukhra.

SETTLEMENT IN LOK ADALAT

HELD ON 11TH DECEMBER, 2009 AT KAJORA GUEST
HOUSE**AWARD**

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The form 'H' containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

MANORANJAN PATTNAIK, Presiding Officer

नई दिल्ली, 19 अप्रैल, 2010

का. आ. 1263.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. पी. डब्ल्यू. डी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 196/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-2010 को प्राप्त हुआ था।

[सं. एल-42011/26/99-आई आर(डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th April, 2010

S. O. 1263.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.196/99) of the Central Government Industrial Tribunal-cum-Labour Court No. II, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CPWD and their workman, which was received by the Central Government on 19-04-2010.

[No. L-42011/26/99-IR(DU)]

SURENDER SINGH, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
IN THE COURT OF SHRI SATNAM SINGH,
PRESIDING OFFICER, CGIT-CUM-LABOUR
COURT-II, NEW DELHI**

I. D. No. 196/1999.

Dated: 12-02-2010

In the matter of dispute between:

Bhoop Singh,
S/o Shri Fateh Singh,
Through: CPWD Mazdoor Union,
C/o Room No. 95, Barracks No. 1/10,
Jamnagar House, Shahjahan Road,
New Delhi-110011

... Workman

Versus

The Management of
Director General (Works)
CPWD, Nirman Bhawan
New Delhi-110011

... Management

AWARD

The Central Government, Ministry of Labour vide order No.L-42011/26/99-IR(DU) dated 13-09-1999 has referred the following industrial dispute to this Tribunal for adjudication:

“ Whether the action of the management of CPWD to regularize the services of Shri Bhoop Singh S/o Shri Fateh Singh is legal and justified? if not, to what relief these workmen are entitled to?”

The workman has filed his statement of claim in which he has submitted that he was engaged as Carpenter w.e.f. 01-09-1981 in 'K' Division, CPWD, as muster role worker. His initial employment was in the basic scale of Rs. 260-400 and w.e.f. 01-01-1986 the same was Rs. 950-1,500, without increments. His services were regularized as Carpenter w.e.f. 03-06-1989 and presently he is working in Construction Division 7, CPWD. That under the Industrial Employment Standing Order Act, 1946, he ought to become permanent after completion of 90 days of service. That non-regularization of services of the workman from the date of his initial engagement is an unfair labour practice under the Industrial Disputes Act 1947. That the workman is entitled to be regularized w.e.f. 01-09-1981 and not from 3-6-1989. The workman, therefore, has prayed that his services be regularized from the date of his initial employment, i.e., w.e.f. 01-09-1981.

The management has contested the claim of the workman and in its reply has submitted that the claim of the workman as well as the reference made by the competent authority before this Tribunal is misconceived and not tenable in the eyes of law. That there is no policy of the Government or any law, as such to regularize the services

of the workman from the date of his initial engagement. That the regularization of the workman was done as per the policy and rules. It is denied that the action of the management is an unfair labour practice. It has asserted that the workman is not entitled to regularization w.e.f. 01-09-1981, as has been claimed by him. The management therefore, has prayed for the dismissal of the claim of the workman.

2. By filing rejoinder the workman has reiterated his claim made in the statement of claim.

3. In support of his case, the workman has filed his affidavit as evidence which is Exb. WWI/A. He has been cross-examined by the Ld. A/R of the management. In rebuttal to that, the management has examined its Executive Engineer, Mr. Anand Kamal Pandey, in this case he too has been cross-examined by the A/R of the workman.

4. I have heard Ld. A/Rs of the parties and have perused the records. I have also gone through the written submissions submitted on behalf of both the parties. Ld. A/R of the workman, in the course of arguments has submitted that the workman, Bhoop Singh, should be regularized w.e.f. 18-11-1986 when Mr. Ramji Lal, junior to him, had been regularized by the management. Countering this submission, the management in its written submissions, has submitted that this demand of workman, Bhoop Singh cannot be fulfilled as Ramji Lal, Carpenter, has been regularized by virtue of award of CGIT in ID No. 26/96 and if workman Bhoop Singh wants to have the same relief, he should file a separate claim before the court of law. Further, the award in respect of Ramji Lal was an ex parte award and so the same is not applicable in the case of workman, Bhoop Singh.

5. Shri Anand Kamal Pandey, Executive Engineer, CPWD, 'N' Division, the witness of the management, in cross-examination, has admitted that a letter had been issued for regularization of Ramji Lal, Carpenter, w.e.f. 18-11-1986.

6. Workman Bhoop Singh and Ramji Lal, both are carpenters, in the management CPWD. Workman, Bhoop Singh joined on 01-09-1981 while Ramji Lal, Carpenter, joined on daily wages on 18-11-1986, i.e. after more than five years of the joining of workman Bhoop Singh.

Here, it is appropriate to refer to the decision of the Hon'ble Supreme Court, in *Bal Kishan v/s Delhi Administration & Another* (1990-1-LLJ-61). In paragraph 10 of the said judgement, it has been held as under:—

“10. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralizing effect in service apart from being contrary to Article 16(1) of the Constitution.”

7. As his junior, Ramji Lal, has been confirmed w.e.f. 18-11-1986, there is every good reason for workman Bhoop Singh to contend that he should also at least be confirmed from the said date. A junior cannot be confirmed without considering the case of a senior. There is absolutely no other reason for not confirming workman Bhoop Singh in this case w.e.f. 18-11-1986. As his junior Ramji Lal, Carpenter, has been confirmed w.e.f. 18-11-1986, it is just, fair and reasonable to accept the prayer of workman Bhoop Singh that he too should be confirmed from the said date, i.e. 18-11-1986.

ORDER

8. In view of the above discussion, I hold that workman Bhoop Singh is entitled to regularization to his service in the management CPWD w.e.f. 18-11-1986, with all consequential benefits flowing from the said date of his regularization in service.

Further, it is ordered that the requisite number of copies of this award be forwarded to the Central Government for necessary action at their end.

Dated: 12-02-2010

SATNAM SINGH, Presiding Officer

नई दिल्ली, 19 अप्रैल, 2010

का. आ. 1264.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 93/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-2010 को प्राप्त हुआ था।

[सं. एल-40012/283/2000-आई आर(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th April, 2010

S. O. 1264.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.93/2000) of the Central Government Industrial Tribunal -cum-Labour Court No.II, New Delhi as shown in the Annexure in the Industrial Dispute between employers in relation to the management of Postal Department and their workman, which was received by the Central Government on 19-04-2010.

[No. L-40012/283/2000-IR(DU)]

SURENDER SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT-II, NEW DELHI

I.D. No. 93/2000

Dated: 31-03-2010

In the matter of dispute between:

Shri Dayal Singh Sammal,
S/o Shri Narayan Singh Sammal,
R/o Village Okhal Dunga,
P.O. Okhal Dunga,
Via: Kathgodam District: Nainital,

...Workman

Versus

1. Senior Superintendent of Posts of Tallital, Nainital

2. Deputy Divisional Inspector,
Post Office,
Haldwani, Nainital,

.....Management

AWARD

The Central Government, Ministry of Labour & Employment vide Order No. L-40012/283/2000-IR(DU) dated 29-08-2000 has referred the following industrial dispute to this Tribunal for adjudication:

(b) "Whether the action of the management of Postal Deptt. Nainital in regard to the terminating the services of Sh. Dayal Singh Sammal, Ex-EDDA w.e.f. 17-6-99 is just, fair and legal? If not, to what relief the workman is entitled and from what date?"

2. None is present from the side of the workmen for a long time. In fact, ever since the case was transferred to this Tribunal vide order dated 11-02-2008, the workman has never attended this Court. AR of the management is present. As the workman is not attending this Court ever since the case was transferred from CGIT-I to this Tribunal, it is evident that he is no longer interested in the outcome of this reference. In this situation, there is no way out except to pass a no dispute award, which is passed accordingly in this case and reference I.D. no. 93/2000 sent by the Central Government stands disposed of accordingly.

Further, it is ordered that the requisite number of copies of this award be forwarded to the Central Government for necessary action at their end.

Dated: 31-03-2010 SATNAM SINGH, Presiding Officer

नई दिल्ली, 19 अप्रैल, 2010

का. आ. 1265.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिल्ली छावनी परिषद के प्रबंधतंत्र के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 13/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-2010 को प्राप्त हुआ था।

[सं. एल-13011/5/2005-आई आर(डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th April, 2010

S. O. 1265.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.13/2006) of the Central Government Industrial Tribunal No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between employers in relation to the management of Delhi Chhawani Parishad and their workman, which was received by the Central Government on 19-04-2010.

[No. L-13011/5/2005-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX,
DELHI

I.D.No.13/2006

The General Secretary,
Bhartiya Engineering and General Mazdoor Union,
Bharat Mill Charkhi Gate, Plot No.1,
Near D Block, Karampura, New Delhi-15.

... Claimant union

Versus

The Executive Officer,
Delhi Chhawani Parishad,
Delhi Chhawani

...Management

AWARD

1. Delhi Cantonment Board has been constituted under the provisions of the Cantonment Act, 1924 (hereinafter referred to as the Act) and is controlled by Directorate of Defence Estates, Ministry of Defence, Western Command Headquarters, Chandigarh. Employees of the management are being paid their pay and allowances in pursuance of the Cantonment Fund Rules, framed under the Act. Malis employed by the management raised a demand for equal pay and allowances to that of malis employed by the M.C.D. and N.D.M.C. Their demand did not find favours with the management. They went before High Court of Delhi for appropriate directions. Writ filed by them came to be withdrawn and dispute was raised before the Conciliation Officer. The dispute was again raised before the High Court of Delhi and it was bounced back. When conciliation proceedings failed, appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-13011/5/2005-IR(DU), New Delhi dated 17-5-06, with following terms:

"Whether the demand raised by Bhartiya Engineering & General Mazdoor Union in respect

of Baleshwar Das and 52 others, with regard to parity of pay/salaries for Malis as paid to MCD and NDMC Employees, cycle allowance of Rs. 100 and introducing the post of Chaudhary Mali is just, fair and legal? If yes, to what relief the workmen are entitled to and from which date?"

2. Claim statement was filed pleading therein that Malis employed by the management perform the very duties as performed by the Malis employed by MCD and NDMC. However, Malis employed by the management do not get pay equal to that of Malis employed by MCD and NDMC. There is a difference of Rs. 1400 PM in their pay. Malis of MCD and NDMC get higher scale of pay, besides cycle allowance of Rs. 100 PM. Management does not provide any cycle allowance to its Malis and Head Malis. There is a post of Chaudhary Mali in MCD and NDMC, while no such post exist with the management. It has been claimed that Malis and Head Malis employed by the management should be accorded pay equal to that of Malis and Head Malis employed in MCD and NDMC, besides cycle allowances. A post of Chaudhary Mali may also ought to be created in the establishment of the management.

3. Management demurred the claim pleading that its employees get wages and allowances as per Cantonment Fund Rules framed under the Act. Demand made by the union for payment of salary and other facilities equal to that of MCD and NDMC cannot be accepted. It has been pleaded that the management pays cycle allowance to its out staff including Malis. It has been projected that there does not exist any post of Chaudhary Mali and such post a cannot be created by this Tribunal. Qualification for appointment to the post of Malis, Head Malis and Chaudhary Malis are different and distinct than the qualifications provided by the management for appointment of Malis and Head Malis. Claim put forward by the union is liable to be dismissed.

4. Settlement dated 13-5-69 was filed, besides a letter dated 4-9-2009 issued by the Deputy Director (Horticulture), NDMC, New Delhi as evidence on behalf of the Claimant Union.

5. Management opted to abandon the proceedings on 16-9-2009. The Tribunal was constrained to proceed with the matter under rule 22 of the Industrial Disputes (Central) Rules, 1957.

6. Arguments were advanced by Shri Triyogi Narain, authorized representative, on behalf of the Claimant Union. None came forward to rebut the submissions so made. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record.

My findings on issues involved in the controversy are as follows :

7. Settlement dated 13-5-1969 was arrived at between the representative of the management on one hand and the representative of the employees of the Cantonment Boards on the other, when award given by the National Industrial Tribunal, Bombay, fixing pay and allowances of the Cantonment Board Employees, expired in 1963. It was agreed that the revised pay scale of the Cantonment Fund servants shall be as shown in Column 4 of the schedule appended to the settlement, which scale shall have effect from 1-9-67. Formula for fixation of the initial pay of the Cantonment Fund servants, was devised as under:

- (i) At the minimum of the revised scale, if NRP falls short of the minimum of the revised scale.
- (ii) At the stage next higher in the revised scale, if NRP corresponds to a stage in the revised scale.
- (iii) At the higher stage, if the NRP is in between two stages in the revised scale; and
- (iv) If the NRP is more than the maximum of the revised scale then at the maximum of the revised scale, the difference between the NRP and the maximum of the revised Pay scale being given as personal pay to the individual.

Explanation of the abbreviations used in the above formula

NRP	...	Notional Revised Pay.
BP	...	Basic Pay in the existing scale of pay as on 1-9-1967
D 1	...	Dearness allowance (including all types of dearness allowances and dearness pays) which an employee draws in the existing scale of pay as on 1-9-1967.
D2	...	Dearness allowance (including all types of dearness allowances dearness pays) on the revised pay as on 1-9-1967.

N.B. Existing Scale of Pay will mean pay scale as applicable to the Cantonment Board employees immediately before 1-9-67 and includes Pre-National Industrial Tribunal scales of those employees who may have opted for such old scales under the option given by the National Industrial Tribunal Award.

FORMULA FOR CALCULATION OF NRP

$$\text{NRP} + \text{D2} = (\text{BP} + \text{D 1})$$

8. The settlement contains a stipulation that in the event of revision of pay scale by a State Government after

1st of September, 1967, the revised pay scales and the formula for fixation of pay in the revised pay scale as specified by the State Government shall mutatis mutandis be made applicable to the Cantonment Board Employees in the State from the same date as in the case of State Government Employees. Employees shall have an option either to opt for the revised scale of pay in accordance with the terms of the settlement or to continue on the existing terms. At revision of pay scales subsequent to first of September, 1967, by the State Government, pay fixation formula for Cantonment Board Employees who have opted for revised pay scale will be same as the one applicable to the State Government Employees at such a revision. Date of increment of the employees who opt in favour of the revised pay scale shall be 1st September each year. In the case of remaining employees date of increment shall remain unchanged.

9. The allowances shall be paid at the same rates and under the same terms and conditions as specified by the respective State Governments to their employees, which allowance are as follows:

- (i) Dearness Allowances, including Dearness pay, adhoc increase in D.A. additional D.A., Cost of Living Allowance, New Cost of Living Allowance.
- (ii) Hill or Compensatory Allowance
- (iii) Winter Allowance
- (iv) House Rent Allowance
- (v) Uniform Allowance for specified categories of employees, (Deleted vide G.O.I. Min. of Def. No. F-25/53/L&C/74/604-C/D(Q&C) dated 27-2-75).
- (vi) Cash allowance
- (vii) City Compensatory Allowance
- (viii) High Altitude Allowance

Settlement provides further that whenever any State Government carries out any general revision of pay scales of their employees a similar revision will be undertaken by GOC-in-Chief, the Command, on the basis of the equated post mentioned in column 5 of the schedule.

10. Therefore, out of the contents of the settlement referred above it is evident that initial fixation of pay of Malis were to be made in terms of para 6 of the settlement as on 1-9-67. Whenever there was any revision of pay scales by State Government after 1-9-67 the revision of pay scales and formula for fixation of pay in the revised pay scale as specified by the State Government shall mutatis

mutandis be made applicable to the employees of the management. Here in the case it has been projected by the Claimant Union that pay and allowances received by Malis and Head Malis of MCD and NDMC are higher than the pay and allowances of the Malis and Head Malis employed by the management. As per the terms contained in settlement dated 13-5-1969, the employees the management are entitled to get revision of their pay as equivalent to the Malis and Head Malis of the State Government, that is, the Government of N.C.T. of Delhi. Claimant Union can not seek parity in the matter of pay given by MCD and NDMC to their Malis and Head Malis. Accordingly, the management is directed to revise their pay in accordance with the pay and allowances of Malis and Head Malis of the Government of N.C.T. of Delhi. Since cycle allowance has already been provided to the Malis and Head Malis, there is no dispute in respect of the said allowance.

11. Claimant Union seeks creation of the post of Chaudhary Mali. No such power exist with this Tribunal to issue directions to the management to create a post of Chaudhary Mali. Creation of a post falls within the rega powers of the State. Regal power can be described as functions which are inescapable. Those functions can be described as "administration of justice, maintenance of orders and repression of crime as among the primary and inalienable functions of a constitutional Government". Jobs are created when economy is rapidly expanding. Jobs can not be created by judicial orders. It is purely an executive function, as held in P.U. Joshi (2003 (2) S.C.C. 632). Courts can not create a post, where none exists, laid the Apex Court in Indian Drugs & Pharmaceuticals Ltd. (2007 (1) S.C.C. 408). Reference can also be made to law laid in Uma Devi (2006 (4) S.C.C. 1). Consequently claim of the Claimant Union that the management be directed to create post of Chaudhary Mali cannot be entertained. No such directions can be given to the management to create post of Chaudhary Mali, when it does not exist at all.

12. In view of the foregoing discussions, it is commanded that the management shall pay wages and allowance to Malis and Head Malis as equal to that of Malis and Head Malis of the Government of N.C.T. Delhi, besides cycle allowance of Rs.100/- PM. No. post of Chaudhary mali can be ordered to be created. An award is, accordingly passed. It be sent to the appropriate Government for publication.

Dated: 4-3-2010 DR. D. K. YADAV, Presiding Officer

नई दिल्ली, 19 अप्रैल, 2010

का. आ. 1266.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट

ऑफ पोस्ट ऑफिस के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. I, चण्डीगढ़ के पंचाट (संदर्भ संख्या 70/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-2010 को प्राप्त हुआ था।

[सं. एल-40012/42/2006-आई आर(डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th April, 2010

S. O. 1266.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 70/2006) of the Central Government Industrial Tribunal/Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Senior Superintendent of Post Offices and their workman, which was received by the Central Government on 19-04-2010.

[No. L-40012/42/2006-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case ID No. 70/2006

Smt. Kela Devi W/o Shri Jagmal,

H.No. 628, Janta Colony,

Naya Gaon, Chandigarh.

...Applicant

Versus

The Senior Superintendent of Post Offices,
D/o Post, GPO,
Sector-17,
Chandigarh

....Respondent

APPEARANCES

For the Workman : Shri Amit Sharma.
For the Management : Shri Anish Babbar.

AWARD

Passed on: 12-4-10

Government of India vide notification No. L- 40012/42/2006-(IR(DU), dated 31-10-2006 by exercising its powers

under Section 10 of the Industrial Disputes Act, 1947 (the Act in short), referred the following industrial dispute for adjudication to this Tribunal:

“Whether the action of the management of senior Superintendent, Post Office, Chandigarh in terminating the services of Smt. Kela Devi w.e.f. 16-10-2005 is legal and justified? If not, to what relief the workman is entitled to and from which date?”

After receiving the reference parties were informed. Parties appeared and filed their respective pleadings. The contention of the workman is that she had worked as part time sweeper in the Post Office, Sector-8, Chandigarh for the last 22 to 23 years and had performed her duties honestly, sincerely and with dedication. Her services were terminated illegally on 16-10-2005 without any notice or payment of one month wages in lieu of notice and without payment of lawful terminal dues. After her termination new hands were appointed for the same work. Thus, on the basis of the above, the workman has prayed for her reinstatement into the services with full back wages along with the consequential benefits.

The management appeared and opposed the petition by filing the written statement. The management in para wise reply denied the working of workman with management as part time sweeper for 22 to 23 years. It is contended that Sub-Post Master has get the sweeping job done by making contingent allowance and the total job for sweeping of Sector-8, Post Office is hardly for half an hour or an hour. She was not appointed as part time sweeper in any post office of the management. The Sub-Post master can get the sweeping job done from anybody by making the payment from contingency.

Parties were afforded the opportunity for adducing evidence. The workman filed her affidavit and she was cross-examined by learned counsel for the management on 28-08-2009. Likewise, Shri Jagdeep Gupta Senior Superintendent of Post Office filed his affidavit and he was cross-examined by learned counsel for the workman on 20-10-2009. Parties were heard at length. I have perused the evidence adduced by the parties oral and documentary. During the recording of evidence, the management was directed to file any documents relating to the payment of wages to workman from contingency by ACG-17. Few challans ACG-17 were filed by the management which are on record. It is contended by the management that rest of the records have been weeded out. Concern rules have also been filed which shows that such record which was summoned by this Tribunal are destroyed by the management after 3 years. The workman

seeks some information under the right to Information Act and those information are on record. I have also perused the documents so called by the parties. On perusal of the oral and documentary evidence it is evidently clear that workman had worked with the management for sweeping the Post Office in question for long period. No doubt, the management has denied working of the workman in any of the Post Office as part time sweeper but in evidence and the documents filed by the management, it is evident that the workman had worked for a considerable period with the management for sweeping the Post Office in question.

It is the contention of the management that sweeping work can be taken from any person by payment from contingency. The payment was made good from contingency, is a manner and method of payment of wages. It cannot be said and presumed that those workmen who have been paid the wages from contingency are not entitled for the protection of the rights under Industrial Disputes Act. Even a part time sweeper as per the recent trend of service jurisprudence is entitled for the protection of the provisions of the Industrial Disputes Act and there is no dispute on the issue that workman has completed 240 days of work in the preceding year from the date of her termination. The contention of the management is that she was not entitled for the protection of the provisions under the Industrial Disputes Act and as she was working for a short period every day and was paid from contingency. The workman was engaged by the management. She was working under the administrative control of the management. She was getting the wages directly from the management from contingency. I am unable to understand how under the above circumstances workman is not entitled for the protection under the provisions of Industrial Disputes Act.

It does not mean that the inaction and laxity of the workman has to be tolerated by the management in all the circumstances. On inaction and laxity and when the services of the workman are not required, the services of the workman can be terminated as per the provisions of the Act. The Act does not bar the termination. It regulates termination. It is regulated in the sense that it should be succeeded by a one month notice or payment of one month wages in lieu of notice and other lawful terminal dues. If it is not done the termination of workman, may be of part time worker, will be void and illegal.

There are other provisions which also protects the interest of workman. The nature of work which was employed by the workman was of continuous nature. After the termination of the services of the workman another person was engaged by the management for sweeping

work. The services of the workman were terminated illegally and another person was engaged without providing the opportunity to work to the workman. It is violation of Section 25 H of the Act. In his cross-examination Shri Jagdeep Gupta MWI has stated that some other person is working at the place of the workman. Thus, management is guilty of violation on two rights of the workman. Firstly, his services were terminated without notice, or payment of one month wages in lieu of notice and without payment of retrenchment compensation and another is that fresh hand was engaged without providing her the opportunity to work.

As stated earlier the termination of the workman was illegal. When the termination of the workman has been held to be void and illegal by the Tribunal, there are two remedies available to the workman. The first remedy is the reinstatement of the workman on the same position on which she was earlier working. The second remedy is a reasonable compensation. It is the settled principle of service jurisprudence that priority should be given for reinstatement of the services of the workman. In exceptional cases and in specific circumstances the workman can also be ordered to be compensated by an amount of reasonable compensation. It is true that reinstatement should not be causal and the reason for ordering the reinstatement should be mentioned in the order. It has also become the settled law of service jurisprudence that in case on violation of Section 25 H of the Act, the priority should be given for reinstatement of the workman into the services. In the present case, it has been held by this Tribunal that workman was engaged by the management directly. She was under the administrative control of the management. She was paid wages directly by the management. The work on which she was working was a continuous nature and after the illegal termination of the workman some other person was engaged without affording the opportunity to the workman. Thus, under such circumstances the workman is entitled for reinstatement into the services. Accordingly, the management is directed to reinstatement of the services of workman, on the same position from which she was terminated, within one month from the date of publication. No order as to back wages and the cost. Let Central Government be approached for publication of award, and thereafter, file be consigned to record room.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 19 अप्रैल, 2010

का. आ. 1267.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डॉयरेक्टोरेट ऑफ व्हीट रिसर्च के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय -I, चण्डीगढ़ के पंचाट (संदर्भ संख्या 319 तथा 321/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-2010 को प्राप्त हुआ था।

[सं. एल-42012/138,140/2000-आई आर(डी यू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th April, 2010

S. O. 1267.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.319 & 321/2000) of the Central Government Industrial Tribunal-cum-Labour Court No-I, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Directorate of Wheat Research and their workman, which was received by the Central Government on 19-4-2010.

[No. L-42012/138,140/2000-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE SHRIGYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case ID No.319/2000 & 321/2000

- (1) Shri Sohan Lal S/o Shri Mam Chand, R/o Village & Post Office Saran, Yamunanagar-135001 (Haryana).
- (2) Shri Ishwar Dass S/o Shri Chandgi Ram, H.No.901/8, Sadar Bazar, Gadaria Mohalla, Karnal-132001 (Haryana).

... Applicants

Versus

The Director, Directorate of Wheat Research,
Karnal-132001(Haryana).

... Respondent

APPEARANCES

For the Workman : Sh. Ram Chander.
For the Management : Shri. Ashok Choudhary.

AWARD

Passed on :- 12-04-10

These two references namely ID no. 319/2000, Shri Sohan Lal Vs. Directorate of Wheat Research and ID no. 321/2000, Shri Ishwar Dass Vs. Directorate of Wheat

Research are related to each other. The common question of law and facts are involved in both of the references, hence, for ends of justice both of the references are answered by this single award. The references referred by the Central Government in both of the industrial disputes are as follows:-

(1) In ID no. 319/2000, Ref. No. 42012/138/2000/IR (DU), dated 29-08-2000 "Whether the action of the management of Directorate of Wheat Research, Karnal in terminating the services of Shri Sohan Lal, Beldar w.e.f. 22-7-99 is just and legal? If not, to what relief the workman is entitled?"

(2) In ID no. 321/2000, Ref. no. 42012/140/2000/IR (DU), dated 29-8-2000 "Whether the action of the management of Directorate of Wheat Research, Karnal in terminating the services of Shri Ishwar Dass, Beldar w.e.f. 16-7-99 is just and legal? If not, to what relief the workman is entitled?"

After receiving the references, both of the parties were informed. Parties appeared and filed their respective pleadings. As per the contention of the workmen they have worked with the management for 240 days continuously in the preceding year from the date of their termination. Their services were terminated without a month notice or one month wages in lieu of notice and without payment of lawful terminal dues. In ID no. 319/2000 Shri Sohan Lal has pleaded that he was engaged as Beldar in April 1994 and he worked continuously up to 22nd July 1999. On the other hand, in ID no. 321/2000 Shri Ishwar Dass has contended that he was also appointed by the management of respondent Directorate of Wheat Research in June 1998 and he worked up to 16th July, 1999 continuously. Both of the workmen have prayed for setting aside their termination order being against the provisions of the Industrial Disputes Act (the Act in short). Both of the workmen have also prayed for an order for their reinstatement in services alongwith consequential benefits.

The respondent of management appeared and opposed the claim of the workman by filing written statement. It is contended by the management in both of the Industrial disputes that work available with the management is seasonal. None of the workman has worked continuously. They have not completed 240 days of work in the preceding year from the date of their termination.

Parties were afforded the opportunity of being heard. In each Industrial dispute workman has filed the affidavit and each workman was cross-examined by learned counsel for the management. On the other hand, Shri Roshan Lal, Assistant Administrative Officer, Karnal filed the affidavit on behalf of the management in both of the disputes. Adequate opportunity was given to the management to appear and proceeded with the industrial disputes according to the law. The management and the witness of the management failed to ensure the presence before this

Tribunal. Hence, vide order dated 10-11-2009, the evidence of the management was closed. It was specifically directed by this Tribunal that affidavit filed by/on behalf of the management shall not be read over in evidence because the witness was not subjected to cross-examination. I have heard the workman and learned counsel for the workman at length. I have also perused the oral evidence adduced by the workman. No documentary evidence has been filed by any of the workman and management.

Both of the workman have requested for setting aside the termination order on the ground of violation of the provisions of Sections 25 F, 25 G, and 25 H of the Act. Under the provisions of the Act certain rights of every workman have been protected. Right against illegal termination is protected. It does not mean that management has no right to terminate the services of any workman. The Act regulates the termination. When any workman for any reason is not suitable for the management, the management has got a right to terminate the services of the workman. But as per the provisions of the Act, before the termination of the services of the workman, one month notice or payment of one month wages in lieu of notice and lawful retrenchment compensation is mandatory. If it is not done the termination of the workman from the services is against the provisions of the Act and in violation of the right of the workman protected by the provisions of the Act against the illegal termination.

Likewise, it is also a protected right of the workman that even after the termination, if the services of a casual worker or the similar work on which workman was working before termination are required, priority shall be given to the retrenches. If it is not done the further engagement in violation of the rights of the retrenches shall be void.

It is settled law of service jurisprudence that workman has to prove that his termination was illegal. He has completed 240 days of work with the management and his right to priority of work has been violated. This burden of prove cannot be discharged by merely filing affidavit. Some cogent evidence is required to be filed to prove that workmen was working with the management and has completed 240 days of work in the preceding year from the date of his termination. It is also the duty of the workman to prove that after the illegal termination new hands were engaged/appointed. Except the affidavit there is no material on record to prove that any of the workmen was working with the management and they have worked 240 days of work in the preceding year from the date of their termination. There is no iota of evidence except the affidavit to prove that fresh person were recruited after termination of their services. Accordingly, the workman have failed to prove the desired facts to prove the violation of the provisions of Section 25 F, 25 G, and 25 H as required by the principle of service jurisprudence. Accordingly, none of the workman is entitled for any relief. Both of the references are

accordingly answered. Let Central Government be approached for publication of award, and therefore, files be consigned to record room.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 19 अप्रैल, 2010

का. आ. 1268.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-I, चण्डीगढ़ के पंचाट (संदर्भ संख्या 29/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-12012/29/2005-आई आर(बी. II)]

यू.एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 19th April, 2010

S. O. 1268.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.29/2005) of the Central Government Industrial Tribunal/Labour Court No.-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Punjab and Sind Bank and their workman, which was received by the Central Government on 16-4-2010.

[F. No. L-12012/29/2005-IR(B-II)]

U. S. PANDEY, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH.**

Case ID No.29/2005

Shri Bal Kishan Sharma, S/o Late Shri Bakshi Ram C/o
Shri Suman Sharma, 571, Sector-11-B, Chandigarh.

...Applicant

Versus

The Zonal Manager, Punjab & Sind Bank, Zonal Office,
Sector-17, Chandigarh-160017.

... Respondent

APPEARANCES

For the Workman : Sh. Arun Batra.
For the Management : Shri. Sapan Dhir.

Award

Passed on:-12-04-10

The Government of India vide notification No. L-12012/29/2005-IR(B-II), dated 17-06-2005, by exercising its powers under section 10 of the Industrial Disputes Act, 1947 (the

Act in short), referred the following industrial dispute for adjudication to this Tribunal:—

“Whether the action of the management of Punjab and Sind Bank, Chandigarh in terminating the services of Shri Bal Kishan Sharma w.e.f. 01-04-2002 is illegal and unjustified? If so to what relief the concerned workman is entitled to and from which date?”

After receiving the reference parties were informed. Parties appeared and they availed the opportunity for filing pleadings and adducing evidence afforded by this Tribunal. It is claim of the workman that he was appointed as temporary peon on daily waged basis and he worked as such with the management of respondent bank w.e.f. 14-2-2001 to 31-3-2002 continuously without any break. His services were terminated without any notice or payment of one month wages in lieu of notice and without payment of lawful terminal dues. His termination was against the provision of Section 25 F of the Act. On the basis of the above contentions, the workman has prayed for setting aside the termination order and for an consequential order for reinstatement the services of the workman with consequential benefits.

The management appeared and filed the written statement. It is admitted in para no. 3 of the written statement that Shri Bal Kishan was engaged as temporary peon on daily wage basis. He was not appointed as in accordance with the recruitment procedure of the bank. The bank has its own rules and procedure for appointment. That procedure was not applied. The appointment of Bal Kishan was void-abinito. Branch Manager was having no power and authority to appoint any daily waged worker. In para no.6 of the written statement, the management has also contended that workman has no right for regularisation of his services. The management has mentioned a number of judgements of Hon'ble High Court and Hon'ble Supreme Court on the issue of regularization of the services of a daily wage worker.

As stated earlier, both of the parties were afforded the opportunity for adducing evidence. Affidavits were filed by both of the parties. The opportunity of cross-examination to Shri Bal Kishan was afforded to the management on 15-12-2009. But he was not cross-examined. Number of opportunities were given to the management to adduce its evidence, if any, but the management failed. Thus, vide order dated 15-12-2009 the evidence of the management was closed and the file was fixed for arguments. I have heard the parties at length on 23-03-2010 and file was reserved for award.

Thus, the affidavit filed by Shri B.N.Jarai, Manager of management bank will not be read into evidence because his witness was not subjected to cross examination. Moreover, in the pleading the management has admitted in

para no. 3 that workman was engaged as temporary peon on daily waged basis. It is also not denied that he has completed 240 days in the preceding year from the date of his termination. In para no.9 of written statement, the management has referred the scheme in which the services of all the workman were to be regularized if they have completed 240 days of work within the period mentioned in the policy. It is only contended that workman has not completed 240 days with the management bank by cut off date fixed by the policy. It is nowhere denied that workman has completed 240 days in the preceding year from the date of his termination. On the other hand, the workman has filed the photocopies of the vouchers and some other documents to prove that he was working with the bank as temporary peon on daily waged basis and he has completed 240 days of work in the preceding year from the date of his termination.

Thus, this issue has proved on admission and by the evidence of the workman that workman was working as daily waged worker with the management of the bank and he has completed 240 days of work in the preceding year from the date of his termination.

It is admitted that no evidence or one month wages in lieu of notice were given/paid to the workman before termination of his services. It is also admitted that no retrenchment compensation was paid. On failure to give one month notice or wages in lieu of notice and lawful terminal dues, the management has contended that it was not required because a daily waged worker has no right to post. His services cannot be regularized. To prove this contention the management has relied upon several judicial pronouncement of Hon'ble High Courts and Hon'ble Supreme Court. The management has again and again stress on the law settled by Supreme Court in Secretary, State of Karnataka and others versus Uma Devi and others 2006 (4) SSC1. This is a judicial pronouncement on ad hoc appointments and on similar appointments which has been said to be a bank door entry in public appointment. It is also become the settled principle of service jurisprudence as pronounced of Hon'ble the Apex court in several judicial pronouncements that the principle laid down in Secretary, State of Karnataka and others versus Uma Devi and others (Supra) are not applicable in industrial disputes and petitions pending under the Industrial Disputes Act.

Much has been said by the learned counsel for the management on the date of arguments about the regularization of the services of the workman and right of a daily waged worker to the post.

The issue before this Tribunal is not regarding the regularization of the services of the workman. The issue before the Tribunal is not also whether the workman has right to post? The simple issue referred by the Central Government is the legality of the termination order of a daily waged worker. Every daily waged worker who has

worked with the management for 240 days or more in the preceding year from the date of his termination has certain rights protected under the provision of the Act. The first protection is regarding his termination. The provision of the Act does not bar the termination but regulates it. If the services of a daily waged worker are no more required, the management is at liberty to retrench the services of the workman as per the provisions of the Act. The provision are very clear and mandatory that before termination one month notice shall be given to the workman. If the management wants the exception for notice he has to pay one month wages in advance along with lawful terminal dues as prescribed under the provisions of the Act. As stated earlier, this provision are mandatory and it has not been complied with, the termination shall be illegal. Thus, the issue raised by learned counsel for the management regarding the regularization of the services of the workman and regarding the right of daily waged worker to post have no concern and nexus with the issue referred by the Central Government to this Tribunal. The services of a daily waged worker are protected by the provision of the Act. It is the settled principle of services jurisprudence as well that once it is proved that workman was working on daily waged basis his initial appointment is immaterial. The Tribunal has to see whether he has worked 240 days in the preceding year from the date of his termination?

As stated earlier, the workman has completed 240 days of work in the preceding year from the date of his termination and his services were terminated illegally against the provision of the Act. Accordingly, the termination is illegal.

Whenever, the termination of any workman has been held to be illegal and void being against the provision of the Act, there are two possible remedies available to the workman. The first remedy is his reinstatement in the services and another remedy is a reasonable compensation. The priority should be given for the reinstatement of the workman into the services and in exceptional circumstances he should be remedied with an order of reasonable compensation. The exceptional circumstances include where there is no work available with the management and some other such factors. In pleading it has been mentioned by the management that in the year 21000 the bank has started VRS for the purpose of reducing the work force. Thousands of workers took VRS instead of that the staff is in surplus.

In such a case, I am of the view that workman should be remedied with an amount of reasonable compensation. The compensation to be provided should be based on reasonable criteria. The reasonable criteria include the factors like length of services of the workman with the management, the wages he was getting at the time of his termination, one month wages in lieu of notice, lawful retrenchment compensation, interest on the above amounts,

inflation in Indian economy and price index factor. Considering all the above factors, I am of the view that Rs. 1,00,000 (One lakh only) will be appropriate compensation to the workman. Accordingly, management of respondent bank is directed to pay Rs. 1,00,000 (One lakh only) within one month from the date of publication of award to the workman. If the management pays/deposited this amount within one month from the date of publication of award, no interest need to be paid. If the management fails to comply with the direction the workman will also be entitled for the interest at the rate of 8 per cent per annum from the date of filing the claim petition till final payment. Let Central Government be approached for publication of award, and thereafter, file be consigned to record room.

G.K. SHARMA, Presiding Officer

नई दिल्ली, 19 अप्रैल, 2010

का. आ. 1269.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय-लखनऊ के पंचाट (संदर्भ संख्या 31/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-12012/37/2005-आई आर(बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 19th April, 2010

S. O. 1269.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.31/2005) of the Central Government Industrial Tribunal-cum-Labour Court Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 16-4-2010.

[No. L-12012/37/2005-IR(B-II)]

U.S. PANDEY, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, LUCKNOW

PRESENT

N.K. PUROHIT, PRESIDING OFFICER

ID No.31/2005

Ref. No. L-12012/37/2005-IR (B-II) dated : 13-07-2005

BETWEEN

Shri Laxmi Prasad Vishwakarma
S/o Sri Ram Murat Vishwakarma
104-A/171, Rambagh, Kanpur Nagar,
Kanpur

AND

The Asstt. General Manager
Syndicate Bank Regional Office
43/28 Nawal Kishore Road
Skylark Building 4th Floor
Lucknow-226001

AWARD

31-03-2010

1. By order No. L-12012/37/2005-IR-(B-II) dated : 13-07-2005 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Laxmi Prasad Vishwakarama S/o Shri Ram Murat Vishwakarma, 104-A/171, Ram Bagh, Kanpur Nagar, Kanpur and the Asstt. General Manager, Syndicate Bank, Regional Office, 43/28, Nawal Kishore Road, Skylark Building, 4th Floor, Lucknow for adjudication.

2. The terms of reference under adjudication as under :

"WHETHER ACTION OF THE MANAGEMENT OF SYNDICATE BANK IN TERMINATING THE SERVICES OF SHRI LAXMI PRASAD VISHWAKARMA, WORKMAN W.E.F.23-09-2004 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN CONCERNED IS ENTITLED TO?"

3. In brief the case of the workman is that he was engaged by bank's Kanpur main branch on payment of coolie charges are fetching and serving water in Sarvodaya Nagar branch of the bank at Kanpur on 24-04-1987 and he had worked upto 23-09-2004 as Peon but his services has been terminated without any notice w.e.f. 23-09-2004. He has also contended that he was paid Rs.70 per day as wages and he was also getting bonus, therefore, he has prayed to reinstate and set aside the alleged termination order dated 23-09-2004 and he be reinstated with back wages.

4. The management in its written statement has refuted the claim of the workman it has submitted that the workman was engaged by Kanpur main branch on payment of coolie charges for fetching & serving water whenever it was needed during the period 24-04-87 to 20-11-91. He was paid coolie charges by debiting to contingent expenses. He worked as Badli sweeper during the period April 1999 to March 2002 when regular sweeper were not available and in the year 2004 till September he was engaged as water boy whenever needed intermittently for 78 days and was paid coolie charges. He was not issued with any appointment letter and he was not on the rolls of the Bank. His engagement was purely/temporary in nature and he was never assured in the services of the bank. The management has also submitted that claim of the workman for his regular

as Part Time Sweeper cannot be considered as per guidelines in the matter of filling vacancies of part time employee cadre. For regularisation there must be both posts and need for retention of the temporary employees according to the requirement of the work. The workman was only temporary/Badli Part Time Sweeper and his services cannot be regularized since the workman was never in the services of the bank hence question of termination does not arise.

5. In rejoinder the workman has reiterated the averments in claim statement and has not introduced any new facts.

6. The workman has examined himself as witness whereas the bank has examined Sh. S.P. Jain, Lead District Manager, in support of their respective cases. Both the sides have also filed documents in support of their case.

7. Heard the arguments and learned representatives of both the sides and perused the relevant record.

8. The workman Laxmi Prasad has stated in his statement that he was appointed as Peon in Sarvodaya Nagar branch of the bank on 24-4-87 and he had worked upto 23-09-2004. He has further stated that the work of peon was taken from him and he was getting salary per month and he was also getting bonus. He has alleged that before terminating his service neither notice was given nor compensation was given to him. But in cross examination he has admitted that in none of documents filed by him it is mentioned that he has worked as peon. He has admitted that in documents C-5/3,5/5 and 5/6 submitted by him he has been shows as water boy. He has further admitted that he has not filed any documentary proof for working in the year 1991,1992 as well as for the year 2001,2002,2003 and 2004. He has also admitted that in document C-5/11 and 5/12 produced by him it has been mentioned that he worked as temporary attendant in the month of Jan. 1998 to May 1998 and July 1998 and Dec. 1998 between 3 days to 10 days only in each month. He has also admitted that he had worked in May 1998 to July 1998 and Dec. 1998 but he had admitted that he had not worked for complete month in any of the months. He has also admitted that as per documents 5/13 he had not worked from May 1999 to August 1999 and Oct. 1999 to Dec.1999 further he has also admitted that there is no documentary proof as regard termination of his services on 24-09-2004.

9. In rebuttal, the management witness Sh. S.P. Jain has admitted the following facts :

1. Workman was engaged by Kanpur main branch in the charges of coolie for fetching and serving water whenever it was needed for the period from 24-04-1987 to 20-11-1991.
2. The workman had worked as Badli Sweeper when regular sweeper was not available for the period April 1999 to March 2002.

3. In the year 2004 till September the workman has worked as water boy labour in the branch and he worked for 78 days only.

10. In cross-examination he has stated that payment to the workman was being made from contingencies expenditure during period 24-4-87 to 20-11-91.

11. It is evident from the oral evidence as well as documents adduced by the workman that he was not engaged as a peon against any regular post and he was appointed as water boy during period 24-04-87 to 20-11-91 and as per record produced by the workman it is also evident that during this period he had not worked for more than 240 days in any calendar year. The workman himself admitted that there is no documentary proof for working during the period 2002 to Sept. 2004. The management witness has stated that during the year 2004 till September the workman had worked only for 78 days only. Workman has not adduced any documentary evidence to show that he had worked for more than 240 days during preceding 12 months from the date of his alleged termination i.e. 23-09-2004.

12. The only period which remains for consideration is whether during period April 1999 to March 2002 the workman had worked in the bank in any capacity. In this regard it is admitted fact by the management witness that workman had worked from April 1999 to 2002 as Badli part time sweeper when regular sweeper services were not available. The facts which have been admitted requires no proof. The workman has produced documents C-5/14 which the copy of establishment register/earning record wherein the workman Laxmi Prasad has shown as part time sweeper in Kanpur main branch. Another document 5/14A is pertaining to payment of bonus it reveals from the documents 5/14 that workman had worked and payment of salary to the workman from April 2001 to Dec. 2001 and Jan. 2002 to March 2002 the payment have been made to the workman for the period April 2000 to March 2001. Both these documents are admitted documents by the opposite party, therefore, on the basis of above admitted document and from the admission of the management witness that workman had worked as Badli/Part Time Sweeper during the period April 1999 to March 2002. Thus, it is established that workman had worked more than 240 days during a calendar year as part time sweeper.

13. The management witness Sh. S.P.Jain has stated in his statement that in terms of settlement with Syndicate Bank Employees union the regular part time sweeper/scavenger of the branch is performed duty of temporary attender as such the regular part time sweeper of the bank was entrusted with the duties of temporary attender at the said branch and in the process, the workman was engaged as badli sweeper at Kanpur main branch as the regular part time sweeper was entrusted with attender

duties temporarily and was to be reverted back as soon as regular attender resumed but subsequently in writ petition filed by the union Hon'ble Madras High Court ordered that part time sweeper are not to be entrusted with the temporary attender duties, therefore, the bank advised its branches to discontinue such entrustments and in such circumstances the workman who was engaged as Badli part time sweeper had to be disengaged, therefore, claim of the workman for his regular employment as part time sweeper can not be considered. He has further stated that for entrustment of temporary part time sweeper duties a panel of temporary employees has been maintained as per government guidelines as regard filling of permanent vacancies bank has follow normal recruitment procedure prescribed for the post.

14. However, he has stated that workman was advised to make available his services to the bank as part time sweeper (Badli) as and when required. Since the workman has already in the panel of Badli part time sweeper in branch his service will be engaged as and when temporary vacancies arises and there is a scope of absorbing him in the regular services of the bank whenever the identified vacancies are to be filled up in accordance with the guidelines issued by the bank in this regard.

15. The learned representative on behalf of the management has contended that the workman was engaged as Badli part time sweeper from April 1999 to March 2002 since the regular part time sweeper with attender duties. So it was not appointment against a permanent or regular vacancy but purely temporary arrangement. The workman was in the panel of Badli Sweeper maintained at branch. He has further submitted that in view of judgement of Hon'ble Madras High Court in writ petition no. 615/98 wherein it was ordered that Part Time Sweeper are not to be entrusted with the temporary attender duties, the duties of temporary attenders entrusted to regular part time sweeper was withdrawn and in turn the workman was engaged as Badli part time sweeper had to disengaged.

16. The learned representative on behalf of the management has contended that it has been established from the evidence on record that workman had worked for more than 240 days in calendar year as Badli part time sweeper. Even a part time sweeper engaged as daily wagger is a workman and if he had worked more than 240 days in a calendar year his services could not be terminated without complying the manadatory provision of Section 25 F of the I.D. Act. In support of its contention he has also placed reliance on the following case Laws;

1. 2001 (89) FLR 929 Coal India Ltd. vs P.O.3, Delhi High Court.
2. 1992 LLR 123 Madras H.C. K.Duraisamy vs Tamil

Nadu Electricity Board and Others.

3. 2003 (93) FLR 331 U.P. Drugs and Pharmaceuticals Co. Ltd. vs Ramanuj Yadav and Others.

17. I have given my thoughtful consideration on the rival submissions of the sides.

18. In 2001 (89) FLR 929 Hon'ble Delhi High Court has observed that Section 2(s) of the I.D. Act, 1947 a part time sweeper engaged on daily wages would be a workman and if the workman has worked for more than a year his services cannot be terminated without complying mandatory provision of Section 25 F of the Act. In 2003 (99) 331 Hon'ble Apex Court while dealing the matter under U.P. Industrial Act, 1947 that Section 2(g) of the U.P. Act does not require a workman to avail the benefit of deeming provision of completion of one year of continuous service in the industry to have worked for 240 days during preceding period of 12 calendar months. The preceding has been used for 25-B of I.D. Act as incorporated in the year 1964. The concept of preceeding was introduced in the I.D. Act so as to give complete and meaningful purpose of welfare legislation of working class. While considering the earlier decision Mohan Lal vs Bharat Electronics Ltd. 1981 (42) FLR 389 (SC) Hon'ble Apex Court has observed as under:

"The decision in the case of Mohan Lal not lay down that if a workman had worked for more than 240 days in any number of days, he would not be entitled to the benefit of Section 25-B. The question with which we are concerned was not under consideration in Mohan Lal's case. If his viewpoint propounded by the management is accepted, then in every year the workman would be required to complete more than 240 days. If in any one year the employer given him actual work for less than 240 days, the service of the workman can be terminated without compliance of Section 6-N of the U.P. Act, despite his having worked for number of years and for more than 240 days in each year except the last such an intention cannot be attributed to the U.P. Act."

19. Thus, as per above legal proposition even if the workman had not worked for more than 240 days in preceding 12 months from the date of his alleged termination his services cannot be terminated in violation of Section 25-F of the I.D. Act if he had earlier worked for more than 240 days in each calendar year. In present case admittedly, the workman had worked as part time sweeper from the April 1999 to March 2002. Admittedly, no notice or compensation in lieu of notice was given to the workman, therefore, the termination of the workman is in violation of Section 25-F of the I.D. Act.

20. The workman has raised the dispute at belated staged and there is no evidence that he did not remain in gainful employment after his alleged termination. The management witness has stated that he has tea stall outside the branch. Thus, keeping in view the nature of job and the

period during which he had worked as part time sweeper entire facts & circumstances of this case the ends of justice would be subserved if the workman is reinstated without awarding back wages.

21. Since the action of the management in disengaging the workman without complying mandatory provision of Section 25-F of the I.D. Act is not justified, the workman be reinstated as temporary part time sweeper within one month from the date of publication of award. The workman will not be entitled for any back wages.

22. The reference under adjudication is answered accordingly.

23. Award as above.

LUCKNOW

31-03-2010

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 19 अप्रैल, 2010

का. आ. 1270.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण / श्रम न्यायालय सं. I-चण्डीगढ़ के पंचाट (संदर्भ संख्या 1333/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-12012/58/2007-आई आर(बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 19th April, 2010

S. O. 1270.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1337/2007) of the Central Government Industrial Tribunal-cum-Labour Court No-I Chandigarh now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 16-4-2010.

[No. L-12012/58/2007-IR(B-II)]

U. S. PANDEY, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

CASE ID. No.1333/07

Shri Kanwaljit Singh Bhatia (EPA),
S/o Shri Avtar Singh Bhatia,
Near Krishna Mandir,
Mohalla Dharampur,
Qudian Distt. Gurdaspur-142516

.....Applicant

Versus

The Deputy General Manager, Punjab National Bank, Zonal Office (Punjab North Zone), Macleod Road, Rani Bagh, Amritsar (Punjab)

....Respondent

APPEARANCES

For the workman : Shri Kuldeep Rai Kalia.

For the Management : Shri N.K. Zakhmi.

Award**Passed on :- 06-04-2010**

The Government of India vide notification no L-12012/58/2007-IR (B-II), dated 23-08-2007 by exercising its powers under Section 10 of the Industrial Disputes Act, (the Act in short) has referred the following industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of Punjab National Bank, in terminating the services of Shri Kanwaljit Singh Bhatia w.e.f. 25-03-2006 without conducting fair enquiry as alleged is just and legal ? If not, what relief the workman is entitled to and to what extent.”

After receiving the reference, parties were informed, Parties appeared and filed their respective pleadings. On perusal of the file it is evident that workman was charge sheeted on 09-06-2005 for three accounts. The charges were as follows:-

- (1) On 30-11-2004, Shri Satnam Singh having a/c no. HSGP-I deposited Rs. 7200 for credit to his a/c. He instead of giving credit to the a/c of Shri Satnam Singh made the credit entry of Rs. 7200 in his housing loan a/c no. HSGP-I. When the customer was approached for depositing of installment, it was revealed that he has already deposited the same on 30-11-2004. He reversed the entry of Rs. 7200 from his a/c and credit the a/c of Shri Satnam Singh on 10-01-2005 without passing any voucher.
- (2) He raised a conveyance loan under staff scheme on 26-03-2004 for purchase of Chetak Scooter and failed to complete the formalities and also failed to submit copy of RC despite repeated reminders.
- (3) The balance outstanding in his conveyance loan account no. SCY-23 as on 30-12-2004 was Rs. 22145. He brought the balance in the said loan account to Zero by unauthorized credit of Rs. 3000 and Rs. 19000 on 30-12-2004 and deposited Rs. 145 in cash on 31-12-2004. The

entry of Rs. 3000 was actually pertaining to account no. HSGP-27 of Shri Sanjit Veth & Smt. Neeru. The amount of Rs. 19,000 was pertaining to Term Loan FM8 of Shri Dhian Singh & Shri Gian Singh. On 14-01-2005, you debited your conveyance loan unauthorizedly with Rs. 19,000 and credited to account no. FM8 of Shri Dhian Singh & Shri Gian Singh. Similarly, on 15-01-2005, he debited your conveyance loan account unauthorized with Rs. 3,000 and credited term loan (housing) of Shri Sanjiv Seth. He has passed both the entries on his own and without preparing any vouchers.

The workman is said to reply the charge sheet but dissatisfying with the reply a departmental enquiry was conducted. The enquiry officer filed the enquiry report and taking cognizance on enquiry report after issuing show- cause notice and affording the opportunity for being heard, the disciplinary authority terminated the services of the workman. The workman preferred an appeal which was dismissed by the appellate authority. The workman raised the industrial dispute and on failure of conciliation proceeding before ALC, this reference.

On perusal of the order sheet, it is evidently clear that on 22nd October 2009, this industrial dispute was listed for hearing the arguments on fairness of enquiry. As per the settled law of service jurisprudence the arguments on fairness of enquiry can be heard even without recording the oral evidence of the parties. The preliminary issue can be decided on the basis of the material on record. The material includes the complete enquiry file and other documents parties preferred to file. On 22-10-2009 when this Tribunal was hearing arguments, learned legal representative of the workman Shri Kuldip Rai Kalia stated that he has nothing to say on fairness of enquiry. In very specific words Shri Kalia has stated that enquiry was conducted as per rules of the bank and the grievances of the workman are against the order of the disciplinary authority. Learned legal representative of the workman Shri Kalia has further stated that he has no grievances on the findings of the enquiry officer in his report. Accordingly, this Tribunal passed an order that enquiry was properly and fairly conducted by the enquiry officer and there has been no violation of any rules of principle of natural justice.

No doubt, learned legal representative of the workman has also stated that he has no grievance against the decision making of the enquiry officer as well, but in compliance of principle of natural justice

opportunity of adducing evidence on decision making was afforded to the workman on 15-12-2009. Parties filed the affidavits. Evidence of the workman was recorded on the same day on 15-12-2009 and file was fixed for arguments.

No doubts, at the cost of repetition, learned legal representative of the workman conceded that he has no grievance on the decision making of the enquiry officer but I am of the view that report of enquiry officer, should weight as per the evidence of the workman on decision making. I have gone through the proceeding of the enquiry and enquiry report. On its perusal it is evidently clear that enquiry officer has given all possible opportunity of being heard to the workman and the decision of the enquiry officer on all the issues is based on proper scrutiny of the material placed before him.

As stated earlier, the main grievance of the workman are against the order of punishment passed by the disciplinary authority. In his cross-examination he has admitted that he received the show cause notice issued by the disciplinary authority. He answered the show cause notice, he was afforded and has avail the opportunity of personal hearing.

It is settled principle of service jurisprudence that this Tribunal in the proceedings cannot act as appellate authority of disciplinary authority and appellate authority. It has very limited jurisprudence conferred by legislation on quantum of punishment. It is in the case of glaring injustice to the workman that this Tribunal can invoke its jurisdiction in the punishment awarded by the disciplinary authority. It is just to prevent the miscarriage of justice, this Tribunal can rescind, change or substitute the punishment awarded by the disciplinary authority. In normal circumstances this Tribunal has no jurisdiction to interfere in the punishment awarded by the disciplinary authority. This power/jurisdiction is vested in Section 11 of the Industrial Dispute Act. As per the legislative intent, if the punishment awarded is not proportionate to the committed misconduct and workman suffered with glaring injustice, this Tribunal can invoke the jurisdiction vested in it by the legislation and this jurisdiction has to be exercise in exceptional circumstances.

Now question arise whether the punishment awarded by the disciplinary authority is not proportionate to the committed misconduct? The nature of misconduct which is clear from the records and from the report of the enquiry officer is that workman on

several occasions transferred the amount of customer to the bank to his account and after a substantial period sometimes two months or more he again retransferred it to the account of customers of the bank. It is a temporary embezzlement and fraudulent transfer of amount from account of the customers of the bank to the advantage of the workman. It was not only of one instance which can be said by mistake but number of instances have been proved. Thus, the Act of workman transferring the amount of customers from the bank to his own benefit to his account is such the customer may lost the trust and confidence in the bussiness of the bank. Certainly under such circumstances the confidence of the bank in the workman is also lost, and if financial institution like bank has lost the confidence in any employee on account of financial irregularities the workman become liability to the bank. Accordingly, the disciplinary authority has rightly awarded the punishment of the termination from the services. As such the punishment was/is in proportionate to the committed misconduct. Workman is not accordingly entitled for any relief. The reference is answered in same term. Let Central Government be approached for publication of award, and thereafter, file be consigned to record room.

G.K.SHARMA, Presiding Officer

नई दिल्ली, 19 अप्रैल, 2010

का. आ. 1271.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय -जबलपुर के पंचाट (संदर्भ संख्या 159/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-1201/136/2001-आई आर(बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 19th April, 2010

S. O. 1271.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.159/2001) of the Central Government Industrial Tribunal/Labour Court Jabalpur now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 16-4-2010.

[No. I-1201/136/2001-IR(B-II)]

U.S.PANDEY, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/159/2001

Presiding Officer: Shri Mohd. Shakir Hasan

The General Secretary,
Bank of Baroda Employees Union MP,
C/o Bank of Baroda,
Siyaganj Branch,
Indore-452007

....Workman/Union

Versus

The Regional Manager,
Bank of Baroda, Regional Office,
202, Ganga Jamuna Complex,
M.P. Nagar,
Bhopal

....Management

AWARD

Passed on this 5th day of April, 2010

1. Government of India, Ministry of Labour vide its Notification No. L-12011/136/2001-IR(B-II) dated 10-10-2001 has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the management of Bank of Baroda in not appointing the Daftaries (as per list annexed) to the post of Head Peon and not filling up the vacancy of Daftari at Pitampur Branch is legal and justified? If not, what relief the concerned workmen are entitled to?”

2. In this case, the Union filed an application dated 3-10-2005 wherein it is stated that some of the workmen died and therefore they did not like to file any statement of claim. The learned the then Tribunal proceeded ex parte against the Union/workmen on 6-11-2006.

3. The non-applicant management also appeared through his lawyer in the reference. It is submitted that the Union has not filed any statement of claim in the case and the burden is on the Union to prove his case. As such the management does not want to file any Written Statement.

4. This is clear that this is a case of no evidence and the reference is decided against the Union/workman.

5. In the result, the dispute award is passed without any order to costs.

6. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 19 अप्रैल, 2010

का. आ. 1272.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बिलासपुर रायपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-जबलपुर के पंचाट (संदर्भ संख्या 230/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2010 को प्राप्त हुआ था।

[सं. एल-12012/165/92-आई आर(बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 19th April, 2010

S. O. 1272.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.230/1992) of the Central Government Industrial Tribunal/Labour Court Jabalpur now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Bilaspur Raipur Kshetriya Gramin Bank and their workman, which was received by the Central Government on 16-4-2010.

[No. L-12012/165/92-IR(B-II)]

U.S.PANDEY, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/230/92

Presiding Officer: Shri Mohd. Shakir Hasan

Shri Umesh Kumar Kaushal,
Ex-worker,
Bilaspur Raipur Kshetriya Gramin Bank,
Gram Sihawa,
Tehsil Dhamtari,
Distt. Raipur (MP)

....Workman/Union

Versus

The President,
Bilaspur Raipur kshetriya Gramin Bank,
Dayalband, Bilaspur (MP)

....Management

AWARD

Passed on this 6th day of April, 2010

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/165/92-IR(B-II) dated 23-11-92 dated has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the management of Bilaspur Raipur Kshetriya Gramin Bank in terminating the services of Shri Umesh Kumar Kaushal w.e.f. 1-9-91 was justified? If not, what relief the workman is entitled to?”

2. The case of the workman, in short, is that he was appointed as temporary sweeper-cum-waterman at Sihawa Branch of Bilaspur Raipur Gramin Bank, Bilaspur and worked from 1987 to 1991. It is stated that he worked 84 days in 1988, 97 days in 1989, 143 days in 1990 and 72 days in 1991. Thereafter the non-applicant bank removed him from the service and engaged on Chandrabhan in his place. It is submitted that the reference be answered in his favour.

3. The non-applicant Bank appeared and contested the reference by filing Written Statement. The case of the non-applicant, inter alia, is that the workman Sihawa (Nagri) branch of the Bank and the wages were paid according to the fixed wages determined by the Collector. It is stated that he was never appointed by appointment letter and nor was terminated from the service. He was engaged on daily basis. It is stated that he had never completed 240 days in a calendar year. His name was never recommended by Employment Exchange or by any agency. It is submitted that he is not entitled to any relief.

4. The workman appears to have absented and therefore the then Tribunal proceeded the reference *ex parte* on 3-2-2004 and 6-11-2008 against the workman.

5. The point for issue is as to whether the action of the management in terminating the service of Shri Umesh Kumar Koushal w.e.f. 1-09-91 was justified?

6. To prove the case, the management has adduced one witness. The management witness, Shri Om Prakash Vijay Kumar Verma is Personnel Manager in the Bank. He has stated that the workman was engaged for four hours in the branch occasionally as per requirement. He was never appointed regularly. His evidence shows that he never worked for more than 240 days in a calendar year. Moreover the statement of claim of the workman itself shows that he did not work for more than 240 days in a calendar year. This itself shows that the provision of Sec. 25-F of the Industrial Dispute Act is not applicable. Thus it is established that the workman is not entitled to any relief. The reference is decided against the workman.

7. In the result, the award is passed *ex parte* against the workman without any order to costs.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 20 अप्रैल, 2010

का. आ. 1273.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सब डिवाइजन्सल ऑफिसर, टेलीग्राफ्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ

संख्या 54/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-2010 को प्राप्त हुआ था।

[सं. एल-40012/24/93-आई आर(डी यू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 20th April, 2010

S. O. 1273.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 54/94) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sub-Divisional Officer, Telegraphs and their workman, which was received by the Central Government on 20-4-2010.

[No. L-40012/24/93-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE SHRI B.K. SRIVASTAVA PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR,
KANPUR.**

Industrial Dispute No. 54 of/1994

In the matter of dispute between

Basendra Nath Pandey
S/o Shatrueet Pandey

Vill Andhya Tola Hatwa
P.O. Premwalis Karmani
District Deoria, U.P.

And

Sub-Divisional Officer
Telegraphs Sultanpur.

AWARD

1 Central Government, Ministry of Labour, New Delhi, Vide its notification no L-40012/24/93-IR(DU) dt. 29-06-94, has referred the following dispute for adjudication to this Tribunal—

“Whether the action of SDO (Telegraphs), Sultanpur in terminating the services of Shri Basendra Nath Pandey S/o Shatrueet Pandey, Casual Labour w.e.f. 31-03-89 is legal and justified? If not, what relief the workman concerned is entitled to?”

2. In the case 13-09-95 was fixed for filing of statement of Claim by the concerned workman but neither the concerned workman appeared nor any statement of claim was filed despite availing of sufficient opportunities. It therefore appears to me that the concerned workman is not interested in contesting the case.

3. In view of above the reference is answered in affirmative, consequently the concerned workman is not entitled for any relief.

4. Reference is answered accordingly.

B.K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 20 अप्रैल, 2010

का. आ. 1274.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं एफ. सी. आई. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 171/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-2010 को प्राप्त हुआ था।

[सं. एल-22012/130/1998-आई आर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 20th April, 2010

S. O. 1274.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 171/1999) of the Central Government Industrial Tribunal-cum-Labour Court Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 20-4-2010.

[No. L-22012/130/1998-IR(C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/171/99

Presiding Officer : Shri Mohd. Shakir Hasan

The General Secretary,
Pench Kanhan Koyla Khadan
Karmchari Sangh,
PO Damua,
Distt. Chhindwara

...Workman/Union

Versus

The General Manager,
W.C.L. Kanhan Area,
PO Dungaria,
Distt. Chhindwara (MP)

...Management

AWARD

Passed on this 12th day of April, 2010

1. The Government of India, Ministry of Labour vide its Notification No. L-22012/130/98/IR(CM-II) dated 22-4-99 dated has referred the following dispute for adjudication by this tribunal:-

“Whether the action of the management of WCL, Kanhan Area, Distt. Chhindwara in not providing employment to Shri Rashid Khan S/o Charannoo Khan as employment to the dependent as per NCWA is justified ? If not, to what relief the workman is entitled ?”

2. The case of the applicant, in short, is that one Shri Chhannoo Khan was Pump Khalasi in Nandan Mine No.1 of WCL who became medically unfit on 18-8-89 by the Medical Board of the company. He proposed the name of his son Shri Rashid Khan, the applicant for job in his place under the provision of employment to dependents as per agreement in the National Coal Wage Agreement. After medical examination of his son, the personnel Manager, Kanhan Area vide order dated 8-6-90 directed him to meet with the General Manager, Wani Area of WCL for employment. He met the Personnel Manager, Wani Area of WCL on 10-6-99 but the General Manager Wani Area did not issue any appointment order and he was ordered to meet with Majari Sub Area Manager for the same. The applicant and his father is said to have presented themselves before Sub-Area Majari with all documents from 10-6-96 to 23-6-96 but there was no result. In the meantime, the applicant became ill and reported to the General Manager, Wani Area on 2-9-1990 by registered post. It is stated that the applicant was denied employment as the dependent as per NCWA. It is submitted that the reference be answered in his favour.

3. The non-applicant/Management appeared and contested the reference by filing Written Statement. The case of the management, interalia, is that admittedly the father of the applicant Shri Channukhan was working as Pump Khalasi in Nandan Mine No.1 of WCL, Kanhan Area and was declared medically unfit w.e.f. 18-8-89. It is also admitted that there is a provision for employment to the dependent to permanently disabled worker or who died in service as per NCWA agreement. After considering the case of the applicant, the management of WCL, Kanhan Area passed an order No. PM/22/90/1132 dated 8-6-90 on the direction of the Headquarter and requested the General Manager, WCL, Wani Area to provide dependent employment to the applicant (Exhibit M/1). The Personnel Manager, WCL, Wani Area vide order No. WCL/WA/GM/PR/90/83-A 36105-05 dated 13-6-90 offered the dependent employment as Piece Rated Under Ground Loader to the applicant Shri Rashid Khan (Exhibit M/2) but he did not report on duty in compliance of the order. The applicant submitted an application dated 2-9-90 to the General Manager, Wani Area requesting him for permission to report on duty but even then he never reported before the Majri Underground Sub Area for duty. It is stated that the management had provided and offered employment to the applicant but he himself failed to report for duty. Under the circumstances, the applicant is not entitled to any relief.

4. The point for issue is as to whether the action of the management in not providing employment to the applicant is justified ?

5. The applicant has adduced oral and documentary evidence in the case. Exhibit W/1 is medical examination certificate. The applicant appears to be examined on

27-1-90 and was found fit. This is an admitted document. Exhibit W/2 is the letter dated 8-6-90 of Personnel Manager, Kanhan Area to the General Manager, WCL, Wani Area for employment to the applicant. This is an admitted document. Exhibit W/3 is the letter dated 13-6-90 whereby the Personnel Manager, WCL, Wani Area directed the Sub Area Manager, New Majri sub Area to offer employment as piece rated underground loader after necessary formalities. This is also an admitted document. These letters clearly show that the employment was offered as piece rated underground Loader after necessary formalities. It appears that thereafter it was the liabilities of the applicant to be present before the Sub Area, New Majri Sub Area with required documents. There is no other documentary proof to establish that after 13-6-1990 the applicant was present before the Sub Area Manager, New Majri Sub Area with required documents for employment as piece rated under ground loader. Exhibit W/3 clearly shows that it was posting of employment to dependent of Kanhan Area. Thus the documentary evidence of the applicant proves the case of the management that the applicant had himself not reported on duty.

6. The applicant Shri Rashid Khan is also examined in the case. He has himself admitted in cross examination that he had received appointment letter to report on duty at Wani Area. He has stated that he wanted service in WCL at any place in Kanhan Area. This further shows that it was the fault of the applicant rather he did not want to join at Wani Area in WCL. It appears that there was no provision to offer job at the will of the dependent of the worker as per NCWA.

7. On the other hand, the management has also examined oral and documentary evidence. The documentary evidence appears to be admitted by the applicant. Exhibit M/1 & M/2 are same as Exhibit W/2 and W/3. Relevancy has already been discussed. Exhibit M/3 is the letter dated 2-9-90 of the applicant whereby he sought time for joining. This shows that he had not reported for duty himself. Exhibit M/4 and Exhibit M/5 are letters of the applicant for demand of job. Though the job was offered but the applicant had himself not reported on duty. Thus the documentary evidence of the management shows that the job was offered but the workman had himself not reported on duty. There is nothing to show that the management had ever refused his joining on report before the appropriate authority.

8. The management has also examined one witness. Management witness Shri Anil Mishra has supported the case of the management. He has stated that the employment was offered but the applicant had himself not reported on duty. On the basis of the discussion made above, it is clear that the management had never disputed in offering the employment to applicant, rather the applicant had himself not reported for duty. Accordingly the reference

is answered in favour of the management and against the applicant.

9. In the result, the award is passed without any order to costs.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 20 अप्रैल, 2010

का. आ. 1275.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं बी. बी. एम. बी.के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 968/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-2010 को प्राप्त हुआ था।

[सं. एल-23012/3/2003-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 20th April, 2010

S. O. 1275.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 968/2005) of the Central Government Industrial Tribunal -cum- Labour Court No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Bhakra Beas Management Board, and their workmen, which was received by the Central Government on 20-4-2010.

[No. L-23012/3/2003-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: Sri A. K. Rastogi, Presiding Officer

Case No. I.D. 968/2005

Sh. Kashmiri Lal S/o Sh. Mangat Ram, C/o Sh. R.K. Singh Parmar, 22-L, Brari Pb. INTUC, PO Partap Nagar Township, District Ropar.

...Applicant

Versus

The Chief Engineer, (Generation), Bhakra Beas Management Board, Nangal Township, District Ropar.

...Respondent

APPEARANCES

For the workman : Sh. R.K. Singh Parmar AR.

For the Management : Sh. R.C. Sharda, Law Officer.

AWARD

Passed on 12th April, 2010

Government of India vide Notification No. L-23012/3/2003-IR(CM-11) Dated 05-03-2004, by exercising its powers under Section 10 (1)(d) of the Industrial Disputes Act, 1947 (hereinafter referred as the Act), has referred the following Industrial dispute for adjudication to this Tribunal :—

“Whether the action of the management of Bhakra Beas Management Board, Nangal Township, Dist. Ropar (Punjab) in terminating the services of Shri Kashmiri Lal S/o Sh. Mangat Ram, T/Mate w.e.f. 29-02-1984 is legal and justified? If not, to what relief he is entitled to?”

In short the case of the workman as set out in the statement of claim is that he was in the employment of the respondent as T. Mate in the work-charge capacity from October, 1982 to February, 1984 and has worked for 394 days. On 29-02-1984 he had put 249 days of continuous service in 12 calendar months as detailed in para 7 and 8 of the claim statement, but his services were terminated without serving three months' notice, as required under Section 25-N of the Act. Permission from the competent authority to retrench him was also not obtained as per the provisions of Section 25-N (7) of the Act. He was not served with one month notice either and was not paid wages for the same. Retrenchment compensation as provided under Section 25-F (B) of the Act was also not paid to him. It has further been stated in the claim statement that earlier also he had raised a dispute over his illegal termination in reference No. 127 of 1991 but in that reference date of termination had been given as 01-05-1985. He had withdrawn the said reference with further right to fresh dispute vide order dated 27-11-2002 of the Tribunal. He has also put his grievances about the not giving re-employment to him, regularization of other daily wagers and unfair labour practices on the part of the management, but these grievances are not within the purview of the present reference.

The workman has claimed his reinstatement with continuity of service with full back wages with all consequential benefits.

In its amended written statement the respondent has stated that the Central Government has erred in making the present reference as there exist no dispute and that the present reference is barred by constructive resjudicata as the present reference is based on the same cause of action as it was in Reference No. 127 of 1991. The reference has been opposed on the ground of delay also and it has been stated that the petitioner has approached the Tribunal after more than 18 years. It has also been stated that the reference suffers from the vice of misrepresentation. According to the respondent, the petitioner/workman was

engaged on special work of the Capital Maintenance of Power House Machine and was disengaged after the completion of work after a ten days' notice as per provision of Standing Orders and he had been engaged as a T. Mate in work-charge capacity from 07-10-1982 to 30-04-1985 intermittently. He did not complete 240 days of continuous service as required under Section 25B of the Act. There is a break of more than two months in his service. There was no breach of Section 25N of the Act and no one month notice was required. Extra wages or retrenchment compensation is also not admissible to him. His appointment was for a specified period.

On the pleadings of the parties, the following issues arise for adjudication :—

- I. Whether the Central Government has erred in making the present reference ?
- II. Whether the reference is barred by principle of resjudicata and suffers from the vice of misrepresentation ?
- III. Whether the claim is liable to be dismissed and the Tribunal has no jurisdiction to entertain it as there is a delay of more than 18 years in raising the dispute ?
- IV. Whether the workman has put in 240 days of continuous service as required under Section 25B of the Act ?
- V. Whether the termination/retrenchment of the workman is bad for want of three months' notice and permission of the appropriate authority under Section 25-N of the Act?
- VI. Whether the termination/retrenchment is bad for want of one month notice and retrenchment compensation under Section 25F of the Act?
- VII. Whether the termination of service on a 10 days' notice after completion of special work is according to Standing Orders of the respondent, if so, its effect?
- VIII. To what relief, if any, the workman is entitled?

In evidence the petitioner has filed his own affidavit and the respondent filed the affidavit of Ajaypal Singh, A.E. Operation, BBMB, Power House, Bhakra. The respondent had filed an affidavit earlier also but could not produce the deponent of that affidavit for cross-examination. Parties have filed copies of certain documents also, which will be referred to at proper place.

I have heard the representative of the workman and the Law Officer of the respondent and have also gone through the evidence on record and the written arguments submitted on behalf of respondent. My findings on the various issues are as follows :—

Issue No. I

In the very first para of the written statement it has been agitated that the Central Government had erred in making the reference as neither there existed any dispute nor the same was apprehended. The plea was however not elaborated further nor it was canvassed during the arguments. There appears no basis for the plea and the issue is decided against the respondent accordingly.

Issue No. II

It has been pleaded by the respondent that in reference No. 127 of 1991, the workman had alleged his illegal termination w.e.f. 1-5-1985. He however, withdrew the said reference on 27-11-2002 with malafide intention. Now he has raised a fresh dispute alleging his termination w.e.f. 21-2-1984. The present reference is, therefore, barred by resjudicata. In earlier reference the workman had relinquished all his claims, if any, before 1-5-1985 the alleged date of termination in reference No. 127 of 1991 and he is estopped from raising any dispute for that period now, the present reference suffers from the vice of misrepresentation.

The representative of the workman submitted that in earlier reference the date of termination was wrongly mentioned as 1-5-1985 and for this reason, the reference had been withdrawn with permission to raise fresh dispute. A copy of order dated 27-11-2002 in case No. ID 127 of 1991 is paper number 65 of the record. It shows that the reference has been returned as withdrawn and the workman had been given liberty to raise fresh demand/dispute.

There is nothing on record to show that the workman had been terminated on 1-5-1985, the date of termination mentioned in earlier reference. Obviously, the mention of 01-5-1985 in the earlier reference was wrong. The order passed in reference No. I.D. 127 of 1991 cannot operate as resjudicata for the present reference. The representative of the workman has cited the law laid down in *Bhim Sain Sharma Versus Labour Commissioner, Patiala* 2009(4)SCT-597 where the workman in a earlier reference had challenged his illegal termination but had withdrawn the same. On the management plea that fresh reference on the same subject which has been dismissed as withdrawn could not be valid, it was held by the Hon'ble Punjab and Haryana High Court that mere withdrawal without obtaining adjudication cannot bar a fresh reference.

Under the circumstances it cannot be said that there is a bar of estoppel and the workman had made any misrepresentation. I, therefore, hold that neither the reference is barred by principle of resjudicata nor does it suffers from the vice of misrepresentation. Issue No. II is decided against the respondent accordingly.

Issue No. III

Though in his written statement the respondent has alleged the present reference as stale and belated, filed

after more than 18 years and demanded its dismissal on this ground along, but this plea too was not pressed during the arguments. In case of *Karam Singh Versus Executive Engineer, Haryana State*.

Marketing Board 2007-LLR-1233, in which the employee had approached the Tribunal after a long delay, the Apex Court held that the delay in approaching the Industrial Tribunal is no ground to strike the reference if the termination order is violative of Section 25F of the Industrial Disputes Act.

I am, therefore, of the view that the reference cannot be struck down on the ground of delay alone. Issue No. III is therefore, decided against the respondent.

Issue No. IV

The workman's case is that on 29-2-1984 i.e. the date of his termination order, he had put in 249 days of continuous service in 12 calendar months and his case is covered by Section 2-(oo) and his termination is retrenchment, Section 2-(oo) (bb) is not applicable in his case as clause (bb) was inserted by the Act 4-9 of 1984 w.e.f. 18-8-1984 i.e. after the impugned termination order. It was vehemently argued by the Management that the workman had not completed 240 days continuous service as there was a gap of more than two months in his employment from 7-10-1982 to 30-4-1985. He worked intermittently.

The dictionary clause Section 25-B of the Act provides :—

"25-B Definition of continuous service.—For the purposes of this Chapter,—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman :—

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding to the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;"

The details of the engagements of the workman in the employment of the respondent have been set out in

para 7 of the statement of claim and they are- not disputed. Rather the respondent in his written statement has relied on it. From the details it comes out that from March 1983 to February 1984 i.e. within twelve calendar months of his retrenchment, the workman remained in the employment for 254 days i.e. more than 240 days. I do not subscribe to the view of the Law Officer of the respondent that the working days of the month of the termination order will not be taken into consideration in counting the required 240 days.

Sub-Section 2 of Section 25-B provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months backward and just preceding the relevant date being the date of retrenchment. I, therefore, hold that the workman has put in more than 240 days of continuous service on the date of his retrenchment within the meaning of Section 25-B. Issue No. IV is therefore decided in favour of the workman.

Issue Nos. V, VI and VII

In all these issues mode of termination of the workman has been agitated. On one hand the workman states that for the retrenchment one month notice or wages in lieu thereof and retrenchment compensation under Section 25-F was required. At another place he states that retrenchment is bad for want of three months' notice and permission of the appropriate authority under Section 25-N of the Act. While on the other hand, the respondent states that the engagement of the workman was for a special work and after completion of a special work, the termination of the services on 10 days notice according to the Standing Orders of the respondent and it was perfectly valid.

So far as the pleas of the workman are concerned, it must be understood that Section 25-F and 25-N both cannot be made applicable. Section 25-F falls under Chapter 5A while Section 25-N under Chapter 5-B of the Act. Both sections contains the condition precedents to retrenchment of workman, but from Section 25-L, the definition clause of Chapter 5B it is clear that the provisions of Section 25K to 25-S do not apply to an establishment which is not a factory, mines or plantation because such an establishment is not an industry established as defined by Section 25-L, hence the provision of Chapter 5-B will not apply to a commercial establishment even if employs 100 or more workman.

So, the termination of services of the workman cannot be assailed for want of 3 month's notice under Section 25-N or the payment of wages in lieu of notice period and for want of prior permission of the appropriate government.

So far as the provisions of Section 25-F are concerned they are relevant in the present case. That provides one month notice or payment of wages in lieu thereof and the payment of retrenchment compensation equivalent to 15

days average pay as a condition precedent for the retrenchment of workman employed in any industry who has been in continuous service for not less than one year under an employer. In State of Bombay Vs Hospital Mazdoor Sabha [1960 1LJ251] the Hon'ble Supreme Court held that non compliance of the mandatory condition of Section 25-F render the impugned retrenchment invalid and inoperative.

The respondent has relied on para 21(iii) of the Standing Orders, which provides "that the services of an employee with less than one year shall be terminable with a 10 days' notice or on payment of pay and allowances in lieu thereof. However, no notice shall be required to terminate the services of a workman with less than three months service or in case of persons employed for a specific period."

The relevant extract of the Standing Order was made available in another case by the representative of the department and it now forms the part of the record as paper No.120. Para 21 of the Standing Orders provides for the termination of the employment. Sub clause (i) provides an exception for the application of the provisions of the Standing Orders in case of termination of employment and it provides that no employee, who has been in continuous service of the Board for not less than one year as defined in the Industrial Disputes Act, 1947 shall be retrenched except in accordance with the provisions of the Industrial Disputes Act, 1947.

In the present case the workman has been in the continuous service of the Board for not less than one year as defined in the Industrial Disputes Act, 1947, he cannot be retrenched except in accordance with the provisions of the Act. The Standing Orders of the respondent are not applicable in the case. It is, therefore, held that the retrenchment of the workman is bad for want of one month notice and retrenchment compensation under Section 25-F of the Act and the provisions of the Standing Orders of the respondent or Section 25-N of the Act are not applicable in the present case. Issue No. V is decided against the claimant and Issue No. VII against the respondent, however issue No. VI is decided in favour of the workman.

Issue No. VIII

From the above going discussions, it is clear that the action of the Management of Bhakra Beas Management Board, Nangal Township, District Ropar in terminating the services of the workman w.e.f. 29-02-1984 is not legal and justified.

Workman has claimed his reinstatement with continuity of service with full back wages with all consequential benefits.

While granting the relief the delay aspect cannot be lost sight of. The dispute has been raised after more than 18 years. The time wasted during the pendency of the earlier

reference No. 127 of 1991 was also the fault of the workman. He himself is to be blamed for the wrong mention of the date of termination in that reference. In Rattan Singh Vs Union of India and another (1997) 11 SCC 396 wherein nearly 20 years has elapsed from the date when the service of the workman were terminated in violation of Section 25-N of the Act, the Hon'ble Supreme Court observed:

"In these circumstances we are not inclined to direct the reinstatement of the appellant but having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs. 25,000 be paid to the appellant in lieu of compensation for back wages as well as reinstatement."

In Sain Steel product Vs Naipal Singh and others 2001-AIR-SCW-2426, the Hon'ble Apex Court granted a sum of Rs. 50,000 to the workman in lieu of his reinstatement or back wages on the grounds that there had been an inordinate delay as the services had been terminated long back.

It is in the cross-examination (dated 02-08-2006) of the workman that he worked as a labourer as and when he gets the work, he has got three children and one of them is studying. As per Claim Statement he remained in the service of the respondent from October, 1982 to February, 1984 only and his order of appointment Ex. M-2 shows that he was working in the Scale of Rs. 300-430 plus usual allowances as allowed by the Board from time to time. Considering all the factors I am of the view that a compensation of Rs. 40,000 (Rupees Forty thousand only) will be just and proper in lieu of retrenchment and back wages etc. The reference is answered against the respondents. The action of the management of Bhakra Beas Management Board, Nangal Township, District Ropar (Punjab) in terminating the services of Sri Kashmiri Lal S/o Mangat Ram T. Mate w.e.f. 29-02-1984 is not legal and justified. The workman is entitled to get Rs. 40,000 by way of compensation in lieu of his retrenchment and back wages from the respondent Bhakra Beas Management Board, Nangal Township, District Ropar (Punjab). Let a copy of the award be sent to the Central Government for further necessary action and record be consigned after due compliance.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 20 अप्रैल, 2010

का. आ. 1275.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 4/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-2010 को प्राप्त हुआ था।

[सं. एल-22012/43/2004-आई आर (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 20th April, 2010

S. O. 1275.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 4/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of Singareni Collieries Company Limited, and their workmen, received by the Central Government on 20-4-2010.

[No. L-22012/43/2004-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 6th day of February, 2009

Industrial Dispute No. 4/2005

Between :

The General Secretary
(Sri Bandari Satyanarayana),
Singareni Collieries Employees
Council (INTUC), BCH 30,
Vittal Nagar,
Godavarikhani - 505209

...Petitioner

AND

The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam - I Division,
Godavarikhani - 505209

...Respondent

APPEARANCES :

For the Petitioner : M/s. A. Sarojana, K. Vasudeva
Reddy and Purnachandar Rao,
Advocates

For the Respondent : Sri P. A. V. V. S. Sarma, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/43/2004-IR(CM-II) dated 22-12-2004 referred the following dispute under Section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Division, Godavarikhani in not granting Grade-B under SLU as per M/S dated

3-1-1999 in respect of Sri Karraula Lingaiah, Grade-C Security Guard, S & PC is legal and justified? If not, to what relief the workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 4/2005 and notices issued to the parties.

2. On 6-2-2009, case called out for filing of claim statement by Petitioner, Petitioner did not file claim statement. Though this case is pending since June, 2005 Petitioner has not taken interest to file claim statement. As such, there is no justification to adjourn the case. It is closed for want of claim statement. Hence, a Nil Award is passed. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 6th day of February, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 20 अप्रैल, 2010

का. आ. 1277.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं एस. सी. सी. एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 42/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-2010 को प्राप्त हुआ था।

[सं. एल-22012/117/2004-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 20th April, 2010

S. O. 1277.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of M/s. Singareni Collieries Company Limited, and their workman, which was received by the Central Government on 20-4-2010.

[No. L-22012/117/2004-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 6th day of February, 2009

Industrial Dispute No. 42/2005

Between :

The General Secretary
(Sri Bandari Satyanarayana),
Singareni Collieries Employees
Council (INTUC), BCH 30,
Vittal Nagar,
Godavarikhani - 505209.

...Petitioner

AND

The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Bellampalli Division,
Bellampalli - 504251.

...Respondent

APPEARANCES:

For the Petitioner : M/s. A. Sarojana, K. Vasudeva
Reddy & Purnachandar Rao,
Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma and
P. Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/117/2004-IR(CM-II) dated 10-5-2005 referred the following dispute under Section 10(1)(d) of the I.D. Act, 1947, for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

“Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Bellampalli Division, Bellampalli in terminating the services of Sri Syed Abdul Waheed, Ex-Badli Filler, MVK-6 Incl., Bellampalli Divn., with effect from 19-2-1999 is legal and justified? If not, to what relief the workman is entitled?”

The reference is numbered in this Tribunal as I.D. No. 42/2005 and notices issued to the parties.

2. On 6-2-2009, case called out for filing of claim statement by Petitioner, Petitioner did not file claim statement. Though this case is pending since July, 2005 Petitioner has not filed claim statement even after four years. As such, the case is closed for want of claim statement. Hence, a Nil Award is passed. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 6th day of February, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 20 अप्रैल, 2010

का. आ. 1278.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 3/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-2010 को प्राप्त हुआ था।

[सं. एल-22012/67/2004-आई आर(सीएम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 20th April, 2010

S. O. 1278.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of Singareni Collieries Company Limited, and their workmen, which was received by the Central Government on 20-4-2010.

[No. L-22012/67/2004-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

PRESENT : SHRI VED PRAKASH GAUR, Presiding Officer

Dated the 6th day of February, 2009

Industrial Dispute No. 3/2005**Between :**

The General Secretary
(Sri Bandari Satyanarayana),
Singareni Collieries Employees
Council (INTUC), BCH 30,
Vittal Nagar,
Godavarikhani - 505209

...Petitioner

AND

The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Division,
Godavarikhani - 505209 ...Respondent

APPEARANCES:

For the Petitioner : M/s. A. Sarojana, K. Vasudeva
Reddy & Purnachandar Rao,
Advocates

For the Respondent : Sri P.A.V.V.S. Sarma, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/67/2004-IR(CM-II) dated 10-1-2005 referred the following dispute under Section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

“Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Division, Godavarikhani in not granting Cat. II and Cat. III under seniority linked upgradation (SLU) in respect of Sri Yadagiri Rajesham, General Mazdoor, cat. I, Godavarikhani-I Inc., of M/s. S. C. Co. Ltd., Ramagundam-I, Godavarikhani is legal and justified? If not, to what relief the workman is entitled?”

The reference is numbered in this Tribunal as I.D. No. 3/2005 and notices issued to the parties.

2. On 6-2-2009, case called out for filing of claim statement by Petitioner, Petitioner did not file claim statement even after four years of receipt of this reference. The case is closed for want of claim statement. Hence, a Nil Award is passed. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 6th day of February, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 20 अप्रैल, 2010

AWARD

का. आ. 1279.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 10/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-2010 को प्राप्त हुआ था।

[सं. एल-22013/1/2010-आई आर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 20th April, 2010

S. O. 1279.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Hyderabad (L.C.I.D. No. 10/2007) as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Singareni Collieries Company Limited, and their workman, which was received by the Central Government on 20-4-2010.

[No. L-22013/1/2010-IR(C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD**

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 4th day of February, 2010

Industrial Dispute L. C. No. 10/2007**Between :**

Sri Bhuneni Rajam,
S/o Rajam,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad.

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Mandamarri.
Adilabad district.

2. The Superintendent Mines,
K K-5 Incline,
M/s. Singareni Collieries Company Ltd.,
Mandamarri. Adilabad district.

...Respondents

APPEARANCES:

For the Petitioner : M/s. A. Sarojana and
K. Vasudeva Reddy, Advocates

For the Respondent : Sri S. M. Subhani, Advocate

This claim petition u/s 2A(2) of the I.D. Act has been presented by Sri Bhuneni Rajam an ex-employee of the Singareni Collieries Company Limited with prayer that termination order dated 23-3-1999 be declared as illegal, unjust, and arbitrary and to set aside the order of termination and to reinstate petitioner in services with all consequential benefits in the light of case law reported in judgment of the Hon'ble High Court of Andhra Pradesh W.P. No.8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. It has been submitted by the petitioner in his claim statement that the petitioner was appointed as badli filler in 1989 and thereafter he was promoted as coal filler. Petitioner was regular to his duties till 1997, however, in the year 1997 petitioner suffered from illness and family problems due to which he has not been regular to his duties. A charge sheet dated 6-8-98 was issued to the petitioner in which it was alleged that petitioner habitually remained absent during 1997 which amounts to misconduct under company's standing orders No.25.25. On receipt of the same, petitioner submitted his explanation explaining the reason for his inability to remain absent but without considering the merits of the submissions made by the petitioner an enquiry was ordered to be conducted with a pre-determined mind as if the petitioner willfully absented from duty. During enquiry the petitioner was not given opportunity much less valid in nature. Basing on such lopsided enquiry, Enquiry Officer held the charges to be proved. The disciplinary authority basing on the erroneous findings of the Enquiry Officer dismissed the Petitioner from the services with effect from 5-4-1999 vide office order dated 23-3-1999. The Petitioner has assailed the dismissal order on the ground that enquiry was conducted in a routine and mechanical manner with pre-determined intention. The Respondent has failed to apply his mind while issuing the dismissal order dated 5-4-1999. The Petitioner has challenged the proceedings before the Enquiry Officer but later on the Petitioner himself has conceded to the validity and legality of the departmental proceedings.

3. The Petitioner has further challenged the order of the dismissal on the ground that the impugned dismissal order was not approved by the competent authority and no approval was obtained as per standing orders. No opportunity was given to the Petitioner to contradict the charges. The reason given by the Enquiry Officer is not valid because he has proceeded with the pre-conceived notion, the proceeding was held in a language not known to the Petitioner. The Enquiry Officer's report is based on irrelevant evidence and evidence of such witness who has no personal knowledge about the Petitioner. That submission of the Petitioner was not considered by the Enquiry Officer or disciplinary authority. The Petitioner's submission raised before the Enquiry Officer remained

un-rebutted as the Petitioner has categorically pleaded that he remained absent due to ill-health. It was not rebutted by the Respondent management as such, under the established principles of the law un-rebutted statement is taken to be proved. The dismissal order has been passed illegally, arbitrarily and it is disproportionate to the alleged misconduct, hence, liable to be quashed and Petitioner is entitled to be reinstated in the service with all consequential benefits and back wages.

3. The Respondent has filed counter statement challenging the very jurisdiction of this court because the amendment u/s 2A(2) has not been incorporated by the Central Government and is a State Amendment. They have further stated that the Petitioner during the course of enquiry has accepted the misconduct of unauthorised absence as it is also proved from the record. Petitioner was dismissed vide order dated 23-3-1999 but he has filed the present petition after 9 years 6 months and it is barred by delay and laches, on this ground alone Petition deserves to be dismissed as has been held by the Hon'ble Supreme Court in the matter of Assistant Executive Engineer, Karnataka Vs. Shivalinga 2002 1LR - 0- 327, domestic enquiry was held in the matter of Petitioner's absence. Petitioner was given reasonable and satisfactory opportunity to give explanation to the charges served against him. He has contested the domestic enquiry and the charges were found to be proved against the Petitioner by the Enquiry Officer. Petitioner was appointed as badli filler on 9-1-1989. Petitioner's contention is that he suffered from illness and family problems and hence he was not regular to his duties is challenged by Respondent. He has put in only 72 musters during the year 1997 and remained absent unauthorisedly for the rest of the working days which constituted misconduct under company's standing order No. 25.25 and hence, he was issued charge-sheet No. K 5/98/13CS/174 dated 6-8-1998.

“25.25: Habitual late attendance or habitual absence from duty without sufficient cause”

To the above charge Petitioner submitted explanation wherein he stated that his health was not good and he could not attend to duty and he used to take medicines at hospital. Though he claimed illness as cause of absence from duty but he did not substantiate the same with valid documents. Since, explanation submitted by the Petitioner was not found satisfactory, enquiry was ordered, accordingly enquiry was conducted by the Enquiry Officer on 27-10-98 following all the principles of natural justice. Enquiry Officer has submitted his report, Petitioner took active participation in the enquiry proceeding, the Respondent produced their witness in presence of the Petitioner taking entire evidence brought before the Enquiry Officer.

4. The Enquiry Officer submitted his report holding the charges against the Petitioner as proved. The Petitioner

deposed before Enquiry Officer that he was suffering ill health over the past 3 or 4 years and could not be regular to duties and that he was suffering from Hydrocele and proposing to go for operation and he also have family problems but, he accepted that he remained absent during the charge -sheeted period and assured to mend himself. It has been further submitted that even if the Petitioner was suffered from ill-health, it was his primary responsibility as a responsible employee of the Respondent's organization to intimate about his inability to attend his duties to the mine authorities. Petitioner should have reported in colliery hospital as the Respondent company has been operating dispensaries as area hospitals and Main Hospital, but Petitioner without reporting sick in colliery hospital did not inform his inability to attend his duties either to the area authority or to the unit authority and without getting leave or loss of pay leave sanctioned, remained absent during the year 1997. The absence was not on account of accident, ill health or any family problem but it was otherwise. It has further been contended that though the Petitioner assured before the Enquiry Officer that he will remain regular to his duties but he failed to keep his assurance and put in only 72 musters during the year 1998. The Petitioner was an under ground employee and was expected to put in 190 musters during the year, but he has failed to accomplish the same in the calendar years 1994, 1995, 1996, 1997, 1998 and upto 5-4-1999, thus, the Petitioner is a habitual absentee. Enquiry Officer has submitted report stating therein that the charges of absenteeism has been proved against the Petitioner. It has also been proved that he remain absent without intimation and without any reasonable cause and thereby imposition of punishment of dismissal is neither excessive nor disproportionate to the misconduct proved against the Petitioner. The Petitioner was dismissed in the year 1998 but he has raised this objection through this petition after 8 1/2 years. He has not given any reasonable explanation for not approaching to this tribunal or any other Industrial Tribunal after dismissal order. Clause 25.25 of the standing order is proved against the Petitioner to which he has pleaded guilty during the course of enquiry. He put in 52 days musters in 1995, 131 musters in 1996, 72 musters in 1997, 57 musters in 1998 and 3 musters in 1999. He put in 57 musters during 1998. Thus, the misconduct of the Petitioner is grave and punishment is proportionate to the proved guilt or misconduct. The Petition has no force and deserves to be dismissed.

5. I have heard Learned Counsel for the Petitioner as well as that of the Respondents and also gone through the pleading of the parties and the proceedings taken before the Enquiry Officer and entire evidence which was produced before the Enquiry Officer. So far as the question of legality and validity of the departmental proceeding is concerned, Learned Counsel for the Petitioner himself conceded and he has not challenged the legality and

validity of the departmental proceedings and requested that the matter be decided in the light of evidence available on the record. This court has concluded on 2-2-2009 that as the departmental proceeding is not being challenged hence, it is held to be legal and valid.

6. Learned Counsel for the Petitioner though conceded to the validity and legality of the proceeding, but during course of argument u/s 11A has challenged the finding of the Enquiry Officer. He has argued that there was no evidence before the Enquiry Officer to substantiate the charge against the Petitioner. He has further argued that the Enquiry Officer has not considered the submission made before him by the workman that he was suffering from ill-health and also he was restrained from attending to his job due to family problems. He has further argued that even if the charges can be said to have been proved before the Enquiry Officer, the penalty imposed by the Respondent management is disproportionate. He has drawn the attention of this court towards non-compliance of the standing order of the company which deals with the penalties for misconduct. He has vehemently argued that in clause 26 of the standing order there are several other punishments which can be imposed for the misconduct and the dismissal from the service is the last resort by way of punishment which has been inflicted by the Respondent on the Petitioner workman though the Petitioner could have been warned, suspended without wages, his increment could have been stopped without cumulative effect or he could have been reverted to lower stage or lower post removal, discharge or dismissal from the service is extreme penalty which has been imposed and it is disproportionate. He has argued that this court should intervene in the finding of the Enquiry Officer, and on appraisal of evidence atleast lesser punishment be imposed on Petitioner as Petitioner is an illiterate and poor man his entire family depending on him and facing financial crisis, facing starvation and financial crisis.

7. As against above the submission of the Learned Counsel for the Petitioner the Learned Counsel for the Respondent has argued that the Petitioner has taken different stand before the Enquiry Officer. He has stated that he remained absent due to his ill-health, the Petitioner was charged for his absence during the year 1997, but not explained about his absence for year 1997.

8. It has further been argued by the counsel for the Respondent that a specific question was asked to the Petitioner whether he has remained absent from duty on the dates mentioned in the charge sheet to which he has replied that he remained absent from duty on the dates mentioned in the charge sheet. He has further been put in a question why he did not attend to his duty to which he has replied that he remained absent due to illness and incapacity due to which he remained absent. He has further been put in a question as to why he not reported sick in

company's hospital he replied that he do not know the importance of reporting sick in the company's hospital. He was asked whether he has intimated about his absence then he has replied that he has not given any intimation to the company about his absence and he stated that he do not know that it has to be done. He was asked a specific question by the Enquiry Officer where he has any other record to show his sickness, to which he has replied that he do not have any record to show his sickness.

9. This question and answers put before the Enquiry Officer and replied by the Petitioner prove that Enquiry Officer gave full opportunity to the Petitioner to participate in enquiry proceeding and to explain the reason of his absence. Petitioner has to substantiate his contention that he did not attend to his duty during the year 1997 due to his illness or accident. The Learned Counsel for the Respondent has vehemently argued that the contention of the Learned Counsel for the Petitioner that ample and sufficient opportunity was not given to the Petitioner during the course of enquiry is neither correct nor based on documentary evidence. So far as the question of consideration of the explanation of the Petitioner is concerned, the Enquiry Officer has considered the statement of the Petitioner during the course of enquiry and in his report the Enquiry Officer has mentioned the defence taken by the Petitioner that remained absent due to ill-health, but Petitioner could not produce any evidence in support of his claim he has further opined that Petitioner pleaded guilty of the charges levelled against him. Thereby Enquiry Officer has given cogent reason for not giving importance to the defence raised by the workman on the ground that one should have responsibility and duty mindedness towards his job. Petitioner should have reported in the company's hospital during the time of alleged ill-health. But he has not reported in company's hospital and thereby the Enquiry Officer has given his finding that the charges against the charged employee is proved. Enquiry Officer has further held that charged employee has not given sufficient evidence in support of defence raised by the workman hence, his absence is not justified in the eye of law. The arguments advanced by the Learned Counsel for the Petitioner before this tribunal that the Enquiry Officer has not applied his mind to the explanation submitted by the Petitioner during the course of enquiry and has not given any finding on grounds raised by the Petitioner for remaining absent during the year 1997 is neither cogent nor reasonable. It has got no support from the document available on this record.

10. Respondent's counsel has further argued that the Petitioner worked only for 72 musters during the year 1997. Not only that he has put in only 52 musters during 1995, 131 musters in 1996, 72 musters in 1997, 57 musters in 1998 and 3 musters in 1999. No doubt, the absence of Petitioner for previous year was not a matter of the charge sheet or Enquiry but it was relevant to the fact of habitual

absenteeism matter of Petitioner. The habit of Petitioner to remain absent even before and after the date of charge sheet or the year of charge sheet is a supplement to prove the conduct of the Petitioner and his non-inclination towards his job and towards his duty. The Learned Counsel for the Respondent has further argued that if the Petitioner remained sick during the year 1997 on the dates mentioned in the charge sheet, the problems suffered by him has not been sufficiently explained before the Enquiry Officer. The Petitioner put in only 72 days musters during the year 1997, he could not substantiate about his ill-health either before the Enquiry Officer or before this tribunal. Thus, the conclusion of the Enquiry Officer that Petitioner was habitual absentee and he was not serious to his job duties and remained absent without sufficient attendance, for putting only 57 musters during the entire year is neither without basis of evidence but it is based on material evidence imposition of dismissal as penalty is neither disproportionate to the misconduct proved against the Petitioner nor it is excessive.

11. Learned Counsel for the Respondent has further argued that the Petitioner has filed this claim after 8½ years after imposition of the punishment and no cogent reasons has been given for raising industrial dispute within a reasonable time. Hence, the petition deserves to be dismissed on the ground of delay and laches. It has further been argued that in clause 26 of the standing order though several other punishments have been discussed and enumerated but the Respondent had compared and considered the gravity of the punishment and conduct of the Petitioner who put in only 72 days in a period of 365 days, then the punishment of dismissal was imposed hence there is no force in the argument that other punishment in lieu of dismissal or removal or discharge could have been imposed is hypothetical and without any basis. It has been argued by Respondent that it is the discretion of the disciplinary authority to impose a particular punishment and unless said punishment could said to be excessive or disproportionate to the misconduct committed by workman. Petitioner can not raise objection with the nature of punishment imposed.

12. I have considered the above argument of the Learned Counsel for the parties and I am of the considered view that this tribunal has to consider following points:

- (I) whether the Enquiry Officer has considered the explanation and reasons of absence stated by the charged employee before him;
- (II) Enquiry Officer has given his findings on the points raised by the Presenting Officer and such findings are correct or not;
- (III) Whether the punishment imposed by the disciplinary authority is disproportionate to misconduct proved against the Petitioner workman and it is excessive, whether it could

have been substituted for any other punishment; and

- (IV) Whether the petition deserves to be dismissed on the ground of delay and laches.

For Points I & II: As has been argued and alleged by the Learned Counsel for the Petitioner and Petitioner himself, the Petitioner raised the defence that he remained ill and that was the reason of his absence for putting only 72 musters and to remain absent in the year 1997. Though the Petitioner has alleged that he remained absent due to ill-health in the year 1997 and gave specific statement during the course of enquiry, no evidence was given by workman in support of his statement before the Enquiry Officer. The Respondent has not taken any notice of previous year's absence of the Petitioner and the charges has been levelled for his absence for the year 1997. The explanation submitted by Petitioner did not support either by oral or documentary evidence. The explanation has been sought for 11 months, in which the Petitioner has put in 72 musters. Petitioner saying that he was not able to attend to his duty regularly due to ill-health is not sufficient without substantiating the reason for absence. Secondly the Petitioner himself has stated during the course of his statement before the Enquiry Officer that he has not reported or intimated about his absence nor has sought any type of leave from the competent authority and has very categorically stated that he realized his mistake of remaining absent from duty during the year 1997 and assured that he will remain careful in future and work regularly. The statement of the Petitioner coupled with his admission before the Enquiry Officer about his plea of guilty was sufficient evidence coupled with the statement of Respondent witness Sri N. Narsinga Rao, clerk Grade-I, KK 5 Incline and Sri K. Ranga Rao, Special Grade Clerk, KK5 Incline, pay sheet clerk to prove the charges against the workman who has categorically given statement regarding the absence of Petitioner that the Petitioner was absent in the following dates and periods in the year 1997:

January, 1997	: 2nd, 7th & 9th
February, 1997	: 15th
March, 1997	: 2nd, 6th, 7th, 9th, 15th to 27th, 29th to 31st
April, 1997	: 1st to 22nd, 25th & 29th
May, 1997	: 2nd, 8th, 12th to 17th, 20th to 26th
June, 1997	: 6th, 7th, 13th & 14th
July, 1997	: 1st, 5th, 8th, 12th to 31st
August, 1997	: 1st, 2nd, 6th to 30th
September, 1997	: 1st to 25th, 27th
October, 1997	: 3rd to 10th, 13th to 31st
November, 1997	: 1st to 12th

There was sufficient and convincing evidence before the Enquiry Officer to prove that the Petitioner remained absent from 2-1-1997 to 12-11-1997 on the dates mentioned in the charge sheet. Though the Petitioner in his statement pleaded that he remained sick in the year 1997 he did not substantiate the reason for his absence. The contention of the Learned Counsel for the Petitioner that Enquiry Officer has not considered the statement and reason of the absence of the Petitioner disclosed by the Petitioner before the Enquiry Officer, is neither correct nor convincing. The Enquiry Officer has categorically given his finding and opinion that the contention of the Petitioner that he remained absent due to ill-health was not found corroborated by any on cogent evidence. This opinion of the Enquiry Officer in his enquiry report is sufficient to say that Enquiry Officer has given his categorical finding about explanation of the Petitioner regarding his absence from the duty. As such, from the entire material placed by the Respondent management before this tribunal, this tribunal has come to definite conclusion that Enquiry Officer has given cogent and conclusive finding about the explanation of the Petitioner being unsatisfactory regarding reason of his absence and no fault can be found with the reasoning given by the Enquiry Officer. This tribunal has come to conclusion that the Enquiry Officer has considered the explanation submitted by the Petitioner before him and he has given ample reasoning for arriving at the conclusion that the explanation submitted by the Petitioner is not satisfactory and it can not be said that the Petitioner's plea of ill-health was not considered by the Enquiry Officer. The Enquiry Officer has considered all the material facts and evidence placed before him by Presenting Officer and report is based on such facts and evidence.

(II) This tribunal has to consider whether the penalty imposed upon the Petitioner is in proportion to the misconduct said to have proved against him or it is excessive and could have been alternatively imposed by another penalty mentioned in Sec.26 of the standing orders. Learned Counsel for the Petitioner has vehemently argued and has given very much emphasis on the question and quantum of penalty imposed on the Petitioner by the Respondent management. He has argued that under Sec.26 of the standing orders several modes of punishments have been incorporated. The penalty of removal/discharge from service or dismissal from service is the last resort by way of punishment. Then Respondent management should not have resorted to the serious punishment enumerated in the Sec.26 of the standing order of the company. He has relied on the case law reported in 1973 SC1227, the workman of M/s Fire Stone Tyre and Rubber Company of India Private Limited Vs. The Management, wherein the Hon'ble Supreme Court has opined that even if the dismissal of employee on the ground of misconduct is preceded by a proper and valid domestic enquiry, Sec.11A empowers the Labour Court or tribunal to reappraise the evidence and

examine the correctness of the finding. It also empowers it to interfere with the punishment and alter the same. I have considered this case law of the Hon'ble Supreme Court. In this case, the domestic enquiry has been considered and held to be valid by this tribunal, the evidence adduced before the Enquiry Officer has also reappraised by this tribunal and this tribunal is of view that conclusion of Enquiry Officer is based on evidence. This tribunal is well aware of the view of the Hon'ble Supreme Court that the provision of Sec.11A confers the power with the Labour Court/Tribunal to reassess the punishment and alter the same. But the Learned Counsel for the Petitioner has not been able to show before this tribunal that the punishment imposed upon the Petitioner workman is excessive in comparison to the misconduct committed by the Petitioner viz., the charges levelled against him. The Petitioner has remained absent and had put in only 72 musters during the year 1997. He has not been able to prove that the absence of Petitioner was for a reasonable cause, then question of alteration of punishment could not be raised before this tribunal. This tribunal is aware that it has got power to alter the punishment but at the same time this tribunal is of the considered opinion that there must be valid and cogent reason and ground for the alteration of the punishment. What was the reason of his absence, why he did not report regarding his absence to his superiors, why he did not reported sick to the company's hospital? When these questions were raised the reasons best known to the Petitioner, he has not been able to explain reasonably before the Enquiry Officer. The Learned Counsel for the Respondent has argued that Petitioner was a coal filler and key-worker in the matter of production of the coal his absence for a single day will hamper the progress of production of the company. To this argument Learned Counsel for the Petitioner has stated that the duty of coal filler is like a coolie and is simply till the basket with the coal which is lifted from under ground to the ground/surface stage, thus, the duty of the coal filler is not that of key worker and absence of coal filler will not hamper the production of the company. I consider this argument. Even if I agree that the Learned Counsel for the Petitioner that the job of a coal filler is not that of key worker in the coal mines, even then, he is the employee of public sector under taking and he has got certain statutory rules for discharging his duties. Wherein clause 25.25 of standing orders, i.e., habitual late attendance or habitual absence from duty without sufficient cause is an act of misconduct and for a misconduct the penalty has been enumerated under clause 26 of the standing orders. Since the Petitioner put in only 72 musters during the entire period of year 1997, the management has not committed any wrong in imposing the punishment of dismissal from service for an employee who neither intimated about his absence nor sought any leave prior to absence or on attending his duties on those 72 days on which he put his musters through out the year. Thus, there is no sufficient reason or ground to alter the

punishment imposed upon this Petitioner and the management has not committed any illegality nor has imposed excessive punishment which is disproportionate to the misconduct proved against the Petitioner. Learned Counsel for the Petitioner has also relied upon the case law reported in 2006(1) ALT 39, 2006(5) SCC 201, South Indian Cashew Factories Workers Union Vs. Kerala State Cashew Development Corporation Ltd., and 1983-1 LLJ 261, R.M.Parmar Vs. Gujarat Electricity Board regarding alteration of punishment.

I have considered all these case laws and I am of the considered opinion that though this tribunal has been empowered to alter the punishment but at the same time this tribunal is also of the opinion that for altering the punishment imposed by the management there must be reasonable and proper reason, because Hon'ble Supreme Court in the matter of State of U.P. Vs. Ashok Kumar Singh and others (1996) (1) SCC 302 has considered the absence of a constable from duty a grave misconduct and has upheld his discharge from the services to be legal and valid. In this case, the Petitioner has put in only 72 musters he has not given any reasonable and cogent ground for remaining absent through out the year, his misconduct has been proved, he has pleaded guilty before the Enquiry Officer, has not been able to give any evidence regarding his ill-health, thus, the imposition of punishment of dismissal is neither excessive nor disproportionate. This question is decided as such.

Point No. IV: The Respondent has raised the plea of delay and latches. The legislation has not provided any period of limitation to file a petition under Sec.2A(2) of Industrial Disputes Act, 1947 as such, it can not be said that the Petition is barred by delay of latches and it can not be rejected on the ground of delay and latches. This question is decided as such.

Upon the careful consideration of the entire evidence, pleadings of the parties and evidence and arguments advanced before this tribunal, this tribunal has come to the definite conclusion that there is no illegality, irregularity or lack of jurisdiction in passing the order dated 23-3-1999 of dismissal. This petition u/s 2A(2) has got no force and deserves to be dismissed and so this Award. Parties shall bear their own costs.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 4th day of February, 2010.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 20 अप्रैल, 2010

का. आ. 1280.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 103/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-2010 को प्राप्त हुआ था।

[सं. एल-22013/1/2010-आईआर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 20th April, 2010

S. O. 1280.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Hyderabad (L.C.I.D. No. 103/2007) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singareni Collieries Company Ltd. and their workmen, which was received by the Central Government on 20-4-2010.

[No. L-22013/1/2010-IR(C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 4th day of February, 2010

Industrial Dispute L.C. No. 103/2007

Between :

Sri Medi Bapu,
S/o Bheemaiah,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

..Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Mandamarri.
Adilabad district.

2. The Colliery Manager,
RK-5A Incline,
M/s. Singareni Collieries Company Ltd.,
Mandamarri, Adilabad district. ..Respondents

APPEARANCES:

For the Petitioner : M/s. A. Sarojana &
K. Vasudeva Reddy, Advocates

For the Respondent : Sri S.M. Subhani, Advocates

AWARD

This claim petition u/s 2A(2) of the I.D. Act has been presented by Sri Medi Babu and ex-employee of the Singareni Collieries Company Limited filed with prayer that termination order dated 20-11-97 passed by Respondent be declared a illegal, arbitrary and set aside the order of termination and petitioner be reinstated in the services with all consequential benefits in the light of case law reported in judgment of the Hon'ble High Court of Andhra Pradesh W.P. No.8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others

2. It has been submitted by the petitioner in his claim statement that the petitioner was appointed as badli filler in 1983 and thereafter he was promoted as coal filler in the year 1993. Petitioner was regular to his duties till 1996, however, in the year 1996 petitioner met with a road accident and also suffered from other health problems due to which he was not been regular to his duties. A charge sheet dated 6-5-97 was issued to the petitioner in which it was alleged that petitioner habitually remained absent during 1996 which amounts to misconduct under company's standing orders No. 25.25. On receipt of the same, petitioner submitted his explanation explaining the reason for his inability to remain absent but without considering the merits of the submissions made by the petitioner an enquiry was ordered to be conducted with a pre-determined mind as if the petitioner willfully absented from duty. During enquiry the petitioner was not given opportunity much less valid in nature. Basing on such lopsided enquiry, Enquiry Officer held the charges to be proved and the disciplinary authority basing on the erroneous findings of the Enquiry Officer dismissed the Petitioner from the services with effect from 20-11-1997 vide office order dated 20-11-1997. The Petitioner has assailed the dismissal order on the ground that enquiry was conducted in a routine and mechanical manner with pre-determined intention. The Respondent has failed to apply his mind while issuing the dismissal order dated 20-11-97. The Petitioner has challenged the proceedings before the Enquiry Officer but later on the Petitioner himself has conceded to the validity and legality of the departmental proceedings. Hence, that question has to be determined while deciding this case.

3. The Petitioner has further challenged the order of the dismissal on the ground that the impugned dismissal

order was not approved by the competent authority and no approval was obtained as per standing orders. No opportunity was given to the Petitioner to contradict the charges. The reason given by the Enquiry Officer is not valid because he has proceeded with the pre-conceived notion, the proceeding was held in a language not known to the Petitioner. The Enquiry Officer's report is based on irrelevant evidence and evidence of such witness who has no personal knowledge about the Petitioner. That submission of the Petitioner was not considered by the Enquiry Officer or disciplinary authority. The Petitioner's submission raised before the Enquiry Officer remained un-rebutted as the Petitioner has categorically pleaded that he remained absent due to ill-health. It was not rebutted by the Respondent management as such, under the established principles of the law un-rebutted evidence is taken to be proved. The dismissal order has been passed illegally, arbitrarily and it is disproportionate to the alleged misconduct, hence, liable to be quashed and Petitioner is entitled to be reinstated in the service with all consequential benefits and back wages.

4. The Respondent has filed counter statement challenging the very jurisdiction of this court because the amendment u/s 2A(2) has not been incorporated by the Central Government and it is a State Amendment. They have further stated that the Petitioner during the course of enquiry has himself accepted the misconduct of unauthorised absence as it is proved from the record. Petitioner was dismissed from 20-11-97 but he has filed the present petition after 9 years 6 months and it is barred by delay of latches. On this ground alone Petition deserves to be dismissed as has been held by the Hon'ble Supreme Court in the matter of Assistant Executive Engineer, Karnataka V/s. Shivalinga 2002 LLR - O-327, domestic enquiry was held in Petitioner's presence. Petitioner was given reasonable and satisfactory opportunity to give explanation to the charges served against him. He has contested the domestic enquiry and the charges were found to be proved against the Petitioner by the Enquiry Officer. Petitioner was appointed as badli filler in the year 1983 and coal filler on 1-3-1993. He was working at K.K.5A Incline and not at RK5A as mentioned in the cause title. Petitioner's contention is that he met with an accident and suffered from family problems and hence he was not regular to his duties is challenged by Respondent. Petitioner has put in only 28 musters during the year 1995 and remained absent unauthorisedly for the rest of the working days which constituted misconduct under company's standing order No.25.25 and hence, he was issued charge sheet No.KK5A197/Lab.87/941 dated 6-5-1997.

"25.25: Habitual late attendance or habitual absence from duty without sufficient cause"

To the above charge Petitioner submitted explanation and he has stated that his health was not good and he

could not attend to duty and he used to take medicines at hospital. Though he claimed illness as the cause of absence from duty but he did not substantiate the same with valid documents. Since, explanation submitted by the Petitioner was not found satisfactory, enquiry was ordered, accordingly enquiry was conducted by the Enquiry Officer on 7-10-97 following all the principles of natural justice. Enquiry Officer submitted his report, Petitioner took active participation in the enquiry proceeding, the Respondent produced their witness in presence of the Petitioner taking entire evidence brought before the Enquiry Officer. The Enquiry Officer submitted his report holding the charges against the Petitioner as proved. The Petitioner deposed before Enquiry Officer that he met with accident during the year 1995, headache, mental disorder, chest pain and blood vomiting in his deposition before the Enquiry Officer and road accident in the year 1996 and family problems in his affidavit but he accepted that he remained absent during the charge sheeted period and assured to change himself. It has been further submitted that even if the Petitioner has suffered with the accident, it was his primary responsibility as a responsible employee of the Respondent's organization to intimate about his inability to attend his duties to the mine authorities Petitioner should have reported in colliery hospital as the Respondent company is operating dispensaries as area hospitals and Main Hospital. Petitioner without reporting sick in colliery hospital without giving information about his inability to attend his duties either to the area authority or to the unit authority and without getting leave with or without pay leave sanctioned, remained absent during the year 1996. The absence was not on account of accident or any family problem but it was otherwise. It has further been stated by the Respondent that during the course of enquiry the Petitioner submitted before the Enquiry Officer that while coming from Tandoor which is 15 KM away from KK 5A, he met with accident, he was suffered from headache, mental disorder, chest pain and blood vomitings. However, in the present petition the Petitioner has submitted that he met with the accident in the year 1996 and due to that he remained absent in the year 1996, thus, making contradictory statements of his absenteeism during the course of enquiry and this tribunal. It has further been contended that though the Petitioner assured before the Enquiry Officer that he will remain regular to his duties but he failed to keep his assurance and put in only 34 musters during the year 1997. The Petitioner was an under ground employee and was expected to put in 190 musters during the year. But he has failed to accomplish the same in the calendar years 1994, 1995, 1996 and 1997 also. Thus, the Petitioner is a habitual absentee. Enquiry Officer has submitted report stating therein that the charges of absenteeism has been proved. It has also proved that absenteeism is without intimation and without any reasonable cause and thereby imposition of punishment of dismissal is neither excessive nor disproportionate to

the misconduct proved against the Petitioner. The Petitioner was dismissed in the year 1997 but filed this petition after 9 ½ years, he has not given any reasonable explanation for non-approaching of this tribunal or any other Industrial Tribunal after dismissal order. Clause 25.25 of the standing order is proved against the Petitioner to which he has pleaded guilty during the course of enquiry. He put in 155 days musters in 1994, 14 musters in 1995 and 34 musters in 1997. He put in 28 musters during 1996. Thus, the misconduct of the Petitioner is grave and punishment is proportionate to the proved guilt or misconduct. The Petition has no force and deserves to be dismissed.

5. I have heard Learned Counsel for the Petitioner as well as that of the Respondent's counsel and also gone through the pleading of the parties and the proceedings taken before the Enquiry Officer and entire evidence which was produced before the Enquiry Officer. So far as the question of legality and validity of the departmental proceeding is concerned, Learned Counsel for the Petitioner conceded to legality and has not challenged the legality and validity of the departmental proceedings and the matter be decided in the light of evidence available on the record. This court has concluded on 20-2-2009 that as the departmental proceeding is not being challenged hence, it is held to be legal and valid.

6. Learned Counsel for the Petitioner though conceded the validity and legality of the domestic proceeding during the course of argument u/s 11A has challenged the finding of the Enquiry Officer. He has argued before this court that there was no evidence before the Enquiry Officer to substantiate the charge against the Petitioner. He has further argued that the Enquiry Officer has not considered the submission made before him by the workman that he met with an accident in the year 1995 and he was restrained from attending to his job due to family problems. He has further argued that even if the charges can be said to have been proved before the Enquiry Officer, the penalty imposed by the Respondent management is disproportionate. He has drawn the attention of this court towards non-compliance of the standing order of the company which deals with the penalties for misconduct. He has vehemently argued that in clause 26 of the standing order there are several other punishments which can be imposed for the misconduct and the dismissal from the service is the last resort by way of punishment which has been inflicted by the Respondent on the Petitioner workman though the Petitioner could have been warned, suspended without wages, his increment could have been stopped without cumulative effect or he could have been reverted to lower stage or lower post removal, discharge or dismissal from the service is extreme penalty which has been imposed and it is disproportionate. He has argued before this court that lenient view be taken on the question of punishment imposed by the Respondent and a lesser punishment be imposed on Petitioner as Petitioner is an illiterate and poor

man his entire family is dependent on him and facing financial crisis, facing starvation.

7. As against the submission of the Learned Counsel for the Petitioner the Learned Counsel for the Respondent has argued that the Petitioner has taken a different standing before the Enquiry Officer. He has stated that he remained absent due to his ill-health. He came from Tandoor village for his duty which is 15 Km. away from KKSA incline. His right hand got fractured in a deep accident in 1995, he has been suffering from head ache, mental disorder, chest pain and blood vomitings. Further the Petitioner was charged for his absence during the year 1996. He has stated that he was sick from 15-10-1995 to 31-1-1996 and reported sick in the company's hospital.

8. It has further been argued by the counsel for the Respondent that a specific question was asked to the Petitioner during enquiry proceeding whether he has remained absent from duty on the dates mentioned from duty on the dates mentioned in the charge-sheet. To which he has replied that he remained absent from duty on the dates mentioned in the charge-sheet. He has further been put in a question why he did not attend to his duty to which he has replied that he remained absent due to illness and incapacity. He has further been put in a question as to why he not reported sick in company's hospital he replied that he lives in a village named Tandoor which is far away from the company's hospital and he has further replied that he do not know the importance of reporting sick in the company's hospital. He was asked whether he has intimated about his absence then he has replied that he has not given any intimation to the company about his absence and he stated that he do not know that it has to be done. He was asked a specific question by the Enquiry Officer where he has another record to show his sickness, to which he has replied that he do not have any record to show his sickness.

9. This question and answers given before the Enquiry Officer and replied by the Petitioner prove that Enquiry Officer gave full opportunity to the Petitioner to substantiate his contention that he did not attend to his duty during the year 1996 due to his illness or accident. The Learned Counsel for the Respondent has vehemently argued that the contention of the Learned Counsel for the Petitioner that ample and sufficient opportunity was not given to the Petitioner during the course of enquiry is neither correct nor based on documentary evidence. So far as the question of consideration of the explanation of the Petitioner is concerned, the Enquiry Officer has considered the statement of the Petitioner during the course of enquiry and in his report at page 4, the Enquiry Officer has mentioned about the defence taken by the Petitioner as due to ill-health, but he has mentioned that Petitioner could not produce any evidence in support of his claim, he has further stated that Petitioner pleaded guilty of the charges

levelled against him. The Enquiry Officer has given cogent reason for not giving importance to the defence raised by the workman on the ground that one should have responsibility and duty minded towards his job. He should have reported in the company's hospital during the time the alleged to be of ill-health. But he has not reported in company's hospital and thereby the Enquiry Officer has given his finding that the charges against the charged employee is proved. The charged employee has not given sufficient cause or reasons for absence and the defence raised by the workman is not justified in the eye of law, hence, the arguments advanced by the Learned Counsel for the Petitioner before this tribunal that the Enquiry Officer has not applied his mind to the explanation submitted by the Petitioner during the course of enquiry and has not given any finding on the question and grounds raised by the Petitioner for remaining absent during the year 1996 is neither cogent nor reasonable, defence has got no support from the document available on record.

10. Learned Counsel for the Respondent has argued that the Petitioner worked only for 28 musters during the year 1996. Not only that he has put in only 14 musters during 1995. Then if it is taken as proved that the Petitioner met with an accident and suffered injury in his wrist then, from the own submission of the Petitioner during the course of enquiry, he remained sick from 25-10-95 to 19-1-96. Though no evidence has been produced in support of this sick report even then if he met with the accident in the month of October, 1995 then, why he remained absent from the month of January to 24-11-1995. This aspect has not been explained by the Petitioner. The absence of Petitioner in 1995 the charge sheet and Enquiry Officer has also not given any finding about his absence in the year 1995. The conduct and habit of Petitioner to remain absent even before the date of charge sheet or the year of charge sheet is a supplement to prove the conduct of the Petitioner and his non-inclination towards his job and negligent attitude towards his duty. The Learned Counsel for the Respondent has further argued that if the Petitioner remained sick during the month of January, 1996 due to the accident he was discharge after 30th January, 1996. Why he remained absent in the months of February to December on the dates mentioned in the charge sheet and the problems suffered by him before the Enquiry Officer has not been sufficiently explained by the Petitioner. The Petitioner has put in only 28 days musters during the year 1996. He has met with an accident or he remained ill, he was suffering from headache, blood vomitings, has not been substantiate either before the Enquiry Officer or before this Tribunal. Thus, the conclusion of the Enquiry Officer that Petitioner was habitual absentee he was not serious to his job and duties, and remained absent without sufficient attendance, for putting only 28 muster during the entire year 1996, imposition of dismissal as penalty is neither disproportionate to the misconduct proved against the

Petitioner nor it is excessive.

11. Learned Counsel for the Respondent has further argued that the Petitioner has filed this claim after 9 1/2 years after imposition of the punishment and no cogent reason has been given for in raising his industrial dispute within a reasonable time, hence, the petition deserves to be dismissed on the ground of delay and laches. It has further been argued that in clause 26 of the standing order for several other punishments have been discussed and enumerated but the Respondent had considered the gravity of misconduct and awarded punishment to Petitioner who put in 28 days musters in a period of 365 days. The punishment of dismissal is imposed upon Petitioner is not disproportionate and there is no force in the arguments that other punishment in lieu of dismissal or removal or discharge could have been imposed is hypothetical and without any basis. It is the discretion of the disciplinary authority to impose a particular punishment and unless said punishment could be said to be excessive or disproportionate to the misconduct committed by workman, Petitioner cannot raise objection against punishment imposed.

12. I have considered the above argument of the Learned Counsel for the parties and I am of the considered view that this Tribunal has to consider :

(I) whether the Enquiry Officer has considered the explanation and reason of absence stated by the charged employee before him,

(II) Enquiry Officer has given his findings on the points raised by the Presenting Officer and such findings are correct or not,

(III) Whether the punishment imposed by the disciplinary authority is disproportionate to misconduct proved against the Petitioner workman and it is excessive, whether it could have been substituted for any other punishment and

(IV) Whether the petition deserves to be dismissed on the ground of delay and laches.

Points Nos. I & II : As has been argued and alleged by the Learned Counsel for the Petitioner and the Petitioner himself, the Petitioner raised the defence that he remained ill and that was the reason of his absence for putting only 28 musters and to remain absent in the year 1996. Petitioner has alleged that he remained absent due to ill-health as he met with an accident in the year 1995 he has been suffering from head ache, mental disorder, chest pain and blood vomiting, this is a categorical statement of the Petitioner during the course of enquiry. No where in the statement before the Enquiry Officer the Petitioner has stated that he remained ill or reported sick in the year 1996. He has state that he reported sick from 25-10-1995 to 30-1-1996 and

remained hospitalised in company's hospital. It is not disputed that Respondent has not taken any notice of absence of Petitioner for year 1995, the charges has been levelled against the Petitioner for his absence from February, 23rd 1996 onwards. The contention of the Learned Counsel for the Petitioner that Enquiry Officer has not consider the statement of the Petitioner or reason of his absence for sickness on account of his accident in the year 1995 is neither correct nor have any basis, because, the charges have been levelled for the absence of Petitioner from 23-2-1996 onward. So the absence of Petitioner from 25-10-95 to 30-1-96 is not relevant because absence for this period has been considered by the Respondent management it self and no explanation has been called for the absence of Petitioner from 25-10-1995 to 30-1-96. It is amply proved from the allegation of the charge sheet itself that the Petitioner's absence up to 30-1-96 on the ground of his sickness and reported sick in company's hospital has been considered by the Respondent management and no explanation was sought for that period. The explanation has been sought for the period 23-02-1996 onward and upto 31-12-1996. In this period of about 11 months, the Petitioner has put in 28 musters. What was the reason of his absence during 23-02-1996 to 31-12-1996 has not been disclosed by the Petitioner during the course of his statement before Enquiry Officer. The statement of Petitioner that he was not able to attend to his duty regularly due to ill-health is not sufficient but he has substantiate the reason for absence. Secondly the Petitioner himself has stated during the course of his statement before the Enquiry Officer that he has not reported or intimated about his absence nor has sought any type of leave from the competent authority and has very categorically stated that he realised his mistake of remaining absent from duty during the year 1996 and assured that he will remain careful in future and work regularly. This statment of the Petitioner coupled with his admission before the Enquiry Officer, that he pleaded guilty of the charges levelled against him was sufficient evidence coupled with the statement of Respondent witness Sri D.V. Ratnam O.S. of KK 5A Incline and Sri R. Nagendra Rao, Special Grade Clerk, KK5A Incline, pay sheet clerk who has categorically given his statement regarding the absence of Petitioner that the Petitioner was absent in the following dates and periods in the year 1996:

February, 1996	: 23rd to 29th
March, 1996	: 1st to 4th, 16th to 19th, 24th to 26th and 29th to 31st
April, 1996	: 19th to 30th
May, 1996	: 3rd to 7th
June, 1996	: 1st to 30th
July, 1996	: 1st to 18th
August, 1996	: 1st to 11th

September, 1996 : 1st to 5th and 23rd to 26th

October, 1996 : 1st to 8th

November, 1996 : 2nd to 5th

December, 1996 : 1st to 31st

There was sufficient evidence before the Enquiry Officer to prove that the Petitioner remained absent from 23-02-1996 to 31-12-1996 on the dates mentioned in the chargesheet without sufficient cause and without information, Petitioner in his statement pleaded that he remained sick in the year 1995 but he did not explain or disclosed reason for his absence during the year 1996. Since the Petitioner was charge sheeted for his absence for the year 1996 there was no reason for the Enquiry Officer to consider the absence of Petitioner and his statement regarding the year 1995. The contention of the Learned Counsel for the Petitioner that Enquiry Officer has not considered the statement and reason of the absence of the Petitioner disclosed by the Petitioner before the Enquiry Officer, is neither correct nor found support from the records submitted by the Respondent, that is the record of the enquiry proceeding undertaken before the Enquiry Officer. The Enquiry Officer has categorically given his finding that the contention of the Petitioner that he remained absent due to ill-health was not found corroboration by any evidence. This option of the Enquiry Officer in his enquiry report is sufficient to say that Enquiry Officer has given his categorical finding after considering the explanation of the Petitioner regarding his absence from the duty. As such, from the entire material placed by the Respondent management before this Tribunal, this Tribunal has come definite conclusion that Enquiry Officer has given cogent and conclusive finding about the explanation of the Petitioner being unsatisfactory regarding reason of his absence and no fault can be found with the reasoning given by the Enquiry Officer. This Tribunal has come to conclusion with the Enquiry Officer has consider the explanation submitted by the Petitioner before him and he has given ample reasoning for arriving at the conclusion that the explanation submitted by the Petitioner is not satisfactory and it can not be said that the Petitioner's plea of ill-health was not considered by the Enquiry Officer.

Point No. III : This Tribunal has to consider whether the penalty imposed upon the Petitioner is in proportion to the misconduct said to have proved against him or it is excessive and could have been alternatively imposed by another penalty mentioned in Sec.26 of the standing orders. Learned Counsel for the Petitioner has vehemently argued and has given very much emphasis on the question and quantum of penalty imposed on the Petitioner by the Respondent management. He has argued that u/s.26 of the standing orders several modes of punishments have been incorporated. The penalty of removal/discharge from service or dismissal from service is the last resort by way of punishment. He argues before this tribunal that the

Respondent management should not have resorted to the serious punishment enumerated in the Sec.26 of the standing order of the Company. He has relied on the case law reported in 1973 SC 1227, the workman of M/s Fire Stone Tyre and Rubber Company of India Private Limited Vs. the Management, wherein the Hon'ble Supreme Court has opined that even if the dismissal of employee on the ground of misconduct is preceded by a proper and valid domestic enquiry, Sec.9A empowers the Labour Court or tribunal to reappraise the evidence and examine the correctness of the finding, thereat. It empowers it to interfere with the punishment and alter the same. I have considered this case law of the Hon'ble Supreme Court. In this case, the domestic enquiry has been considered and held to be valid by this Tribunal, the evidence adduced before the Enquiry Officer has also reappraised by this tribunal and this tribunal is also of the view that, the conclusion arrived at by Enquiry Officer is valid, finding of Hon'ble Supreme Court that the provision of Sec.11 A confers the power with the Labour Court/Tribunal to reassess the punishment and alter the same. But the Learned Counsel of the Petitioner has not been able to show before this tribunal that the punishment imposed upon the Petitioner workman is excessive in comparison to the misconduct committed by the Petitioner viz. the charges levelled against him. Petitioner has remained absent and had put in only 28 musters during the year, 1996. Had he been able to prove that the absence of Petitioner was for a reasonable cause, the question of alteration of punishment could have been raised before this Tribunal. This tribunal is aware that it has got power to alter the punishment but at the same time this tribunal is of the considered opinion that there must be valid and cogent reason and ground for the alteration of the punishment. Petitioner of this case was young man even if he had met with an accident in the month of October, 1995 he was hospitalized and taken treatment from the company's hospital from 25-10-1995 to 30-1-1996 thereafter he was discharged, as alleged by the charge-sheeted employee himself. After 30-01-1996 what was the reason of his absence, why he did not report regarding his absence to his superiors, why he did not reported sick to the company's hospital? when questioned, reason best known to the Petitioner, to which he was not able to explain reasonably before this tribunal or before the Enquiry Officer. The Learned Counsel for the Respondent has argued that Petitioner was a coal filler and co-worker in the matter of production of the coal and his absence for a single day will hamper the progress of production of the company. To this argument Learned Counsel for the Petitioner has stated that the duty of coal filler is like a coolie and is simply filling the basket with the coal which is lifted from under ground to the ground/surface stage, thus, the duty of the coal filler is not that of key worker and absence of coal filler will not hamper the production of the company. I consider this argument. Even if I agree with the Learned Counsel for the Petitioner that the job of a coal filler is not that of key

worker in the coal mines, even then, he is the employee of public sector undertaking and he has got certain statutory rules for discharging his duties. Wherein clause 25.25 of standing orders, i.e. habitual late attendance or habitual absence from duty without sufficient cause is an act of misconduct and for a misconduct the penalty has been enumerated under clause 26 of the standing orders. Since the Petitioner put in only 28 musters during the entire period of year 1996, the management has not committed any wrong in imposing the punishment of dismissal from service for an employee who neither intimated about his absence nor sought any leave prior to absence or on attending his duties on those 28 days on which he put his musters through out the year. Thus, there is no sufficient reason or ground to alter the punishment imposed upon this Petitioner and the management has not committed any illegality nor has imposed excessive punishment which is disproportionate to the misconduct proved against the Petitioner. Learned Counsel for the Petitioner has also relied upon the case law reported in 2006(1)ALT 39, 2006(5) SCC 201, South Indian Cashew Factories Workers Union Vs. Kerala State Cashew Development Corporation Ltd., and 1983-1 LLJ 261, R.M. Parmar Vs. Gujarat Electricity Board regarding alteration of punishment.

I have considered all these case law and I am of the considered opinion that though this tribunal has been empowered to alter the punishment but at the same time this tribunal is also of the opinion that for altering the punishment imposed by the management there must be reasonable and proper reason, because **Hon'ble Supreme Court in the matter of State of U.P. Vs. Ashok Kumar Singh and others (1996)(1)SCC 302 has considered the absence of a constable from duty a grave misconduct and has upheld his discharge from the services to be legal and valid.** In this case, the Petitioner has put in only 28 musters he has not given any reasonable and cogent ground for remaining absent through out the year, his misconduct has been proved, he has pleaded guilty before the Enquiry Officer, has not been able to give any evidence regarding his ill-health, thus, the imposition of punishment of dismissal is neither excessive nor disproportionate. This question is decided as such.

Point No. IV : The Respondent has raised the plea of delay and latches. The legislation has not provided any period of limitation to file a petition under Sec. 2A(2) of Industrial Disputes Act, 1947 as such, it can not be said that the Petitioner is barred by delay of latches and it can not be rejected on the ground of delay and latches. This question is decided as such.

Upon the careful consideration of the entire evidence, pleadings of the parties and arguments advanced before this tribunal, this tribunal has come to the definite conclusion that there is no illegality, irregularity or lack of jurisdiction

in passing the order dated 20-11-1997 that is the impugned order of dismissal. Petition u/s 2A (2) has got no force and deserves to be dismissed and so this Award. Parties shall bear their own costs of this petition.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 4th day of February, 2010.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner
NIL

Documents marked for the Respondent
NIL

नई दिल्ली, 20 अप्रैल, 2010

का. आ. 1281.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 70/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-2010 को प्राप्त हुआ था।

[सं. एल-12011/131/2001-आई आर(बी-II)]

यू.एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 20th April, 2010

S. O. 1281.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 70/2001) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 20-4-2010.

[No. L-12011/131/2001-IR(B-II)]

U.S. PANDEY, Desk Officer

ANNEXURE

**BEFORE SHRI A.N. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/70/2001

Date: 15-03-2010

Petitioner/Party No. 1 : The General Secretary,
Central Bank Staff Union,
Rashtriya Mill Mazdoor Sangh,
Baidhnath Chowk,
NAGPUR-440003

Versus

Respondent/No. 2 : The Zonal Manager,
CBI, Oriental Building,
Zonal Office, Kamptee Road,
NAGPUR-440001

AWARD

Dated : 15th March, 2010

1. The Central Government after satisfying the existence of dispute between the General Secretary, Central Bank Staff Union, Nagpur (Party No.1) and the Zonal Manager, CBI, Oriental Building, Zonal Office, Nagpur (Party No. 2) referred the same for adjudication to this Tribunal vide its letter No. L-12011/131/2001-IR (B-II) dated 18-9-2001 under clauses (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) with the following schedule.

2. "Whether the action of the management of Central Bank of India through its Zonal Manager, Nagpur in not offering the post of Special Assistant to Shri S. C. Chourpagar w.e.f. 26-5-2000 at Deolgaon Mahi Branch, Akola is legal, proper and justified? If not, what relief the said workman is entitled to?"

3. The Petitioner has approached to the court with the prayer that the management has promoted to the petitioner as an officer from 6-5-2002 and consequently the petitioner wants to withdraw the reference unconditionally and accordingly he has filed the pursis on 10-12-2009. He was allowed to withdraw the case and accordingly no dispute award has been passed. Hence this award.

Date : 15-3-2010

A. N. YADAV, Presiding Officer

नई दिल्ली, 20 अप्रैल, 2010

का. आ. 1282.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यू इंडिया एश्योरेंस क. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या 261/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-2010 को प्राप्त हुआ था।

[सं. एल-17012/7/2000-आई आर(बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 20th April, 2010

S. O. 1282.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 261/2000) of the Central Government Industrial Tribunal/ Labour Court Chandigarh now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of New India Assurance Co. Ltd. and their workmen, which was received by the Central Government on 20-4-2010.

[No. L-17012/7/2000-IR(B-II)]

U. S. PANDEY, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case No. I. D. No. 261/2000

Sh. M. S. Singh. S/o Sh. P. Singh, Vill. Ballawal,
P. O. Bhoggowal, Teh. Malerkotla, Sangrur

...Applicant

Versus

New India Assurance Co. Ltd., Branch Manager, NIACL,
Malerkotla, Sangrur

...Respondent

APPEARANCES :

For the Workman : Shri Hardial Singh, Advocate.

For the Management: Shri N. K. Zakhmi, Advocate.

AWARD

Passed on 9-4-2010

Government of India vide Notification No. L-17012/7/2000-IR (B-II) dated 22-6-2000, by exercising its powers under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as the Act), referred the following Industrial dispute for adjudication of this Tribunal :—

"Whether any employer-employee relationship exists between the management of New India Assurance Co. Ltd. and Sh. Manjit Singh S/o Shri Piara Singh? If so, whether the action of the management of New India Assurance Company Ltd. in terminating the services of Shri Manjit Singh is legal and just? If not, what relief the concerned workman is entitled to and from which date?"

On perusal of the reference, it is evident that reference is referred in two parts. The first part is about the employer-employee relationship between the workman and the respondent Insurance Co. and the second part is relating to the legality of the termination of the workman. It is the contention of the workman that he was appointed as

Typist-cum-Clerk in May 1990 and his services were terminated on 18-1-1999 without any notice, one month wages in lieu of notice and without payment of lawful terminal dues. Apart from the work of clerk, he has also worked in other capacities for the management for which he was paid the wages by vouchers.

The management appeared and contested the claim by filing written statement. It was contended in the written statement that the workman was engaged on contract basis for typing policy documents and the payment of typing work was made to him through vouchers. The Management has also admitted that he has also worked in respondent organisation on casual basis but on account of his casual services, he cannot claim to be under the employment of respondent Management. The casual worker has no right to post. The workman worked through a typing Institute/Agency and the payment was made good through this Typing Agency.

On the basis of above facts, it is clear that workman has said to be worked, as contended by the Management in two capacities. The first capacity is his working for typing the policies etc. on contract through A-1 Photostat Center and other capacity is his working as casual worker for which payment was made through vouchers. The photocopies of all the voucher have been placed on record. Parties were afforded the opportunity for adducing evidence. Parties were also heard at length.

The first issue before this Tribunal is whether their existed any employer-employee relationship between the workman and the Management of respondent organisation? This is the issue of facts and law, which has to be answered on the basis of facts pleaded and evidence adduced by the parties. A necessary implication of facts and law has to be seen by this Tribunal. I have already narrated the facts. The same has been contended by the parties in their oral evidence. It is admitted by the management that workman has worked in branch of the management Insurance Co. in question from 1990 to 1998. He has denied about the preparation of policies by the workman, but the documents filed by the management are relating to the typing of policies etc.

The employer-employee relationship has been dealt with by Hon'ble the Apex Court in several judicial pronouncements. The leading judicial pronouncement which holds still a good law is Steel Authority of India Ltd. and others Vs National Union Water Workers and Others AIR 2001 SC-3527.

In this case, Hon'ble the Apex Court categorically mentioned the circumstances, which establish the direct employer-employee relationship between the workman and the management. In 2009 the Hon'ble Supreme Court of India in 2008 LLR 801, GM, ONGC Shilcher Vs ONGC Contractual Workers Union has categorically mentioned the circumstances, which establish the employer-employee

relationship between the workman and the Management. In ONGC Shilcher's case, the Hon'ble Supreme Court had relied upon the law laid down in Steel Authority of India Limited's case (supra). Hon'ble High Court of Punjab and Haryana in a recent judgment F.C.I. Versus CGIT-cum-Labour Court-I, Chandigarh, has relied upon both of the judgements of Hon'ble the Apex Court and has mentioned the law relating the employer-employee relationship. It is the case of this very Tribunal in which the Hon'ble Punjab and Haryana High Court has given the view on this issue.

If the ratio of above mentioned all the judicial pronouncements are taken into consideration, it is necessary to prove the following facts for establishing the employer-employee relationship between the workman and the Management :—

1. That there existed a master-servant relationship;
2. That there was no contract between the Management and the Agency providing the contract services to the management;
3. That the workman was directly under the administrative control of the Management;
4. That payment of wages was made good by the Management and not by the contractor;
5. At the cost of repetition the payment requisition roll were prepared by the management and not by the tor.

In ONGC's case (supra) Hon'ble the Apex Court has held that it should be gathered from the facts and circumstances of the case whether the Management intended to take the service of workman on sourcing through contractor or it was a paper arrangement just to make the payment good to the workman.

It is admitted in this case that workman has worked in two capacities. The first capacity as contended by the Management through A-one Typing Service and another as casual worker. As per the Management, the payment of both of the services was independently made. But the Management failed to prove that there was any contract with A-one Typing Services. The management has contended that payment was made good through A-one Services. In absence of any contract for supplying contract labour to the management for supplying contract labour, I am of the view that it was only a paper arrangement made by the management for making the payment good to the workman. The vouchers filed by the Management make it clear that sometimes the payment was made good through cheque of the similar amount for which the workman has worked. It is evidently clear from the perusal of the documents (vouchers) filed by the Management that it was just a paper arrangement made by the Management for making the payment good to the workman for the typing work he has done to the Management. The documents filed by the Management also failed to prove any nexus of

workman with A-one Photostat Center. It is true that workman has admitted in his cross-examination that payment was made good to Muneer Khan, who was proprietor of A-one Photostat and he was making the payment good through a third person, who have no concern with the appointment of workman with Management. It was unlawful labour practice because it was done to prevent the workman for claiming any lawful right under the provisions of the Act.

On other issue there is no dispute that workman also worked as Water boy for a considerable time and he was paid the wages as daily wage worker. His services were terminated without notice, one month wages in lieu of notice and without payment of lawful terminal dues, which made his termination void and illegal being against the provisions of the Act. The witness of the Management has admitted that workman has worked in the Branch from 1990 to 1998. He was preparing the Cover Note of the Policies and was also working as a Water boy. Thus, there is no dispute before this Tribunal that the workman was appointed on casual basis. He was paid daily wages as per the norms of the Insurance Company and for working as a water boy; he was paid wages as the daily wage worker on vouchers. As per the evidence on record, he has worked much more than 240 days in the preceding year from the date of his termination. It is also established that he was under the administrative control of the Management and not of the Muneer Khan through which his salary for typing the Cover Notes of Policies were paid. As stated earlier, it was a procedure adopted by the Management for payment of wages to prevent the workman for claiming his rights accrued under the provisions of the Act. Thus, the termination of the workman was illegal and void. I am answering both of the queries in reference as follows:—

1. That there existed an employer-employee relationship between the workman and the Management of the Insurance Company, and

2. His termination from the services was bad in law being against the provisions of the Act.

The next question arises to what relief the workman is entitled? Whenever the services of any workman are terminated against the provisions of the Act, there are two possible remedies available. The first remedy is the reinstatement of the workman into the service and the other remedy is the payment of lawful compensation. If the circumstances are normal, the services of the workman should be reinstated. As per the recent trend relating to the reinstatement of the services of the workman, the services should not be reinstated casually. Hon'ble High Courts and Hon'ble the Supreme Court in several judicial pronouncements have held that for reinstatement, causes should be mentioned. So far as this case is concerned, the workman has himself stated that it was policy adopted by the Head Office to terminate the services of all the casual

workers and due to that policy, his services were terminated. A casual worker has no right to post. He has a right to protect his work under the provisions of the Act. He has also the right against the unlawful termination and the priority and preference of job in case any work is required after his termination. It makes it clear that provisions of the Act do not bar the termination. The provisions of the Act regulate the termination. If in view of the Management, the service of casual worker is no more required, the same can be terminated as per the provisions of the Act. Meaning thereby, the termination should be succeeded by one month notice or payment of one month wages in lieu of notice and payment of lawful termination dues in form of retrenchment compensation. If it is not done, the termination will be illegal and void. Considering all the facts and circumstances of the case, I am of the view that reasonable compensation to the workman is the appropriate remedy in this case. The compensation to be paid depends on so many factors. The factors are the period the workman served with the Management, the wages he was getting at the time of his termination, amount of one month wages, amount of retrenchment compensation, interest thereon, depreciation in the money and index factor etc. Considering all the facts and circumstances of this case, above factors and the length of service of the workman served with the Management. I am of the view that an amount of Rs. 2,00,000 (Rupees two lakhs only) will be a reasonable compensation to be paid to the workman. I am of the view that this compensation will meet the ends of justice. Accordingly, the Management of respondent is directed to pay/deposit a sum of Rs. 2,00,000 (Rupees two lakhs only) within one month from the date of the publication of the award. It is hereby made clear that if the payment of Rs. 2.00 lakhs is made within one month from the dated publication of the award, Management is not to pay any interest, failing which, the workman will be entitled for an interest @ 9 per cent per annum from the date of the filing of the claim petition till final payment. The reference is accordingly answered. Let Central Government be approached for publication of Award, and thereafter, file be consigned to record room.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 20 अप्रैल, 2010

का. आ. 1283.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 26/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-2010 को प्राप्त हुआ था।

[सं. एल-12012/47/2001-आई आर(बी-11)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 20th April, 2010

S. O. 1283.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2001) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Dena Bank and their workman, which was received by the Central Government on 20-4-2010.

[No. L-12012/47/2001-IR(B-II)]

U.S. PANDEY, Desk Officer

ANNEXURE

**BEFORE SHRI A. N. YADAV, PRESIDING OFFICER,
THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/26/2001

Date: 6-02-2009

Petitioner/Party No. 1 : The Rajendra Ramchandra
Katkars,
C/o Shri M. Piraji Sanmitra
Colony, Near Mahatma
Gandhi Vidyalaya, Mudkhed,
Tah. Mudkhed,
Dist. Nanded
Nanded-431806

Versus

Respondent/ Party No.2 : The Branch Manager
Dena Bank, Branch
Mudkhed, Tah. Mudkhed,
Nanded-431806.

AWARD

Dated : 6th February, 2009

1. The Central Government after satisfying the existence of dispute between Shri Rajendra Ramchandra Katkar, C/o Shri M. Piraji Sanmitra Colony, Near Mahatma Gandhi Vidyalaya, Mudkhed, Tah. Mudkhed, Dist. Nanded, (Party No.1) and the Branch Manager, Dena Bank, Branch Mudkhed, Tah. Mudkhed, Nanded (Party No. 2) referred the same for adjudication to this Tribunal vide its letter No. L-12012/47/2001-IR (B-II) dated 18-6-2001 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) with the following schedule:

2. "Whether the action of the management of Dena Bank represented by (i) The Assistant General Manager, Nagpur Region, Nagpur, (ii) The Branch Manager, Branch Mudkhed, Dist. Nanded (M.S.) in terminating the services of Shri Rajendra Ramchandra Katkar is legal and justified? If not, what relief the said workman is entitled to and from what date?"

3. The reference came up for hearing on 4-2-2009 on which the Petitioner and his Counsel were absent. The counsel for Respondent was present. The Petitioner is not attending the case since last one year. The case is pending for management cross. I do not think it proper to continue it on the same stage years together. It seems that the Petitioner is not interested in prosecuting the case. In the circumstances, no purpose will be served in continuing the case, hence it dismissed for the default of the Petitioner and pass the negative award that he is not entitled for any relief.

Date : 06-02-2009.

A.N.YADAV, Presiding Officer

नई दिल्ली, 21 अप्रैल, 2010

का. आ. 1284.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.डी.ओ.फोन्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/91/92) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-4-2010 को प्राप्त हुआ था।

[सं. एल-40012/178/91-आई आर(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 21st April, 2010

S. O. 1284.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/91/92) of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SDO, Phones and their workman, which was received by the Central Government on 21-4-2010.

[No. L-40012/178/91-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

Case No. CGIT/LC/R/91/92

Presiding Officer : Shri Mohm. Shakir Hasan

Shri Ram Kumar Basor,
S/o Shri Anandilal Basor.
H.No. 165, Basor Mohalla,
Prem Sagar, Post Bai Ka Bagicha,
Jabalpur (MP)

Workman/Union

Versus

Sub Divisional Officer,
Phone-II, Gwarighat Road,
Gorakhpur, Jabalpur Management

AWARD

Passed on this 8th day of April, 2010

1. The Government of India, Ministry of Labour vide its Notification No. L-40012/178/91/IR/(DU) dated 8-5-92 has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of Sub-Divisional Officer Phones -II, Jabalpur (M.P.) in terminating the services of Shri Ramkumar Basor, monthly rated labour, w.e.f. 7-6-90 is justified? If not, what relief the workman concerned is entitled to and from what date?”

2. The case of the applicant/workman, in short, is that the workman was casual labour of the non-applicant from Dec-73 to March 76. Thereafter he was on muster roll from Sept-85 to May 90 and had continuously worked for more than 240 days in a calendar year. It is stated that the non-applicant/management placed him under temporary status w.e.f. 1-10-1989 vide order dated 26-02-1990 and his name was at Sl. No. 72. It is alleged that the non-applicant wrongfully terminated his service w.e.f. 07-06-1990 vide notice No. G-112/CH.II/90-91 dated 6-06-1990. It is stated that the retrenchment-cum-termination by the non-applicant is arbitrary, unconstitutional and against the provision of the Industrial Dispute Act, 1947. The workman filed appeal before the Divisional Engineer, Phone-II, Jabalpur against the said termination but no action was taken. It is submitted that the award be passed with back wages.

3. The non-applicant/management appeared and contested the reference by filing written statement. The case of the non-applicant, inter-alia, is that the workman Shri Ram Kumar Basor was engaged by the S.D.O, Phone, Jabalpur in the year 1985 on daily casual basis and worked intermittently till 1990 on account of exigency of work. In the year 1990 the workman on his own accord failed to report for work and thereafter due to non-availability of work, the workman could not be engaged. It is stated that the workman had never worked 240 days continuously in any given year and therefore his alleged termination does not amount to retrenchment. He was never appointed and there are specific recruitment rules for appointment of class-IV employees. He is not entitled to grant temporary status as he does not fulfill the conditions of the grant the same. It is submitted that the workman is not entitled to any relief.

4. On the basis of the pleading of the both the parties the points for issue are as follows :—

I Whether the action of the management in terminating the services of Shri Ram Kumar Basor, monthly rated labour w.e.f. 07-06-90 is justified?

II If not, what relief the workman is entitled to and from what date?

5. Issue No.1

The workman has adduced oral and documentary evidence to prove his case. Exhibit W/1 is the order dated 26-02-90 of S.D.O, Phones-II, Jabalpur. This is filed to show that the casual labours, who had fulfilled the prescribed conditions, were placed under temporary status w.e.f. 1-10-89. The name of the workman also stands at Sl. No.72. This documents is admitted by the management witness in his evidence. As such it is an admitted document. This document further shows that the workman fulfilled the prescribed conditions to be placed under temporary status.

6. The learned counsel for the workman has filed photocopy of the judgement dated 28-8-95 passed by the Hon'ble Central Administrative Tribunal, Jabalpur in similarly situated cases in case No. O.A. No.411/1990 and several other cases. The scheme framed by the department to grant temporary status is reproduced at para-7 which is as under :—

7. The scheme framed by the department is known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunications, 1989 and reads thus:

1. This Scheme shall be called “Casual Labourers (Grant of temporary status and Regularisation) Scheme of the Department of Telecommunications, 1989”.

2. This Scheme will come in force with effect from 1-10-89 onwards.

3. This Scheme is applicable to the Casual Labourers employed by the Department of Telecommunications.

4. The provision in the scheme would be as under :—

(A) Vacancies in the Group ‘D’ cadres in various offices of the Department of Telecommunication would be exclusively filled by regularization of casual labourers and no outsiders would be appointed to the cadre except in the case of appointments on compassionate grounds, till absorption of all existing casual labourers fulfilling the eligibility conditions including the educational qualification prescribed in the relevant Recruitment Rules. However, regular Group ‘D’ Staff rendered surplus for any reason

will have prior claim for absorption against existing/future vacancies. In the case of illiterate casual labourers, the regularization will be considered only against those posts in respect of which illiteracy will not be an impediment in the performance of duties. They would be allowed age relaxation equivalent to the period for which they had worked continuously as casual labour for the purpose of the age limits prescribed for appointment to the Group D cadre, if required. Outside recruitment for filling up the vacancies in Gr. D will be permitted only under the condition when eligible casual labourers are NOT available.

- (B) Till regular Gr.D vacancies are available to absorb all the casual labourers to whom this scheme is applicable, the casual labourers would be conferred a temporary status, as per the details given below :

5. Temporary Status—

- (i) Temporary status would be conferred on all the casual labourers currently employed and who rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five days week). Such casual labourers will be designated as temporary mazdoors.
- (ii) Such conferment of temporary status would be without reference to the creation/availability of regular Gr.D posts.
- (iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on a need basis. He may be deployed any where within the recruitment unit/territorial circles on the basis of availability of work.
- (iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Gr.D posts.

6. Temporary status would entitles the casual labourers to the following benefits:—

- (i) Wages at daily rates with reference to the minimum of the pay scale for a regular Gr. 'D' Official including DA, HRA and CCA.

- (ii) Benefits in respect of increments in pay scale will be admissible for every one year of services subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 days week) in the year.
- (iii) Leave entitlement will be on pro-rata basis, one day for every 10 days of work, casual leave or any other kind of leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularization. They will not be entitled to the benefit of encashment of leave on termination of services for any reason or their quitting service.
- (iv) Counting of 50% of service rendered under temporary status for the purpose of retirement benefits after their regularization.
- (v) After rendering three years continuous service on attainment of temporary status, the casual labourers would be treated on a par with temporary Gr. D employees for the purpose of contribution to General Provident Fund, and would also further be eligible for the grant of Festival Advance/Food Advance on the same conditions as are applicable to temporary Gr. D employees, provided they furnish two securities from permanent Government servants of this department.
- (vi) Until they are regularized, they would be entitled to productivity Linked Bonus only at rates as applicable to casual labour.

7. No benefits other than those specified above till be admissible to casual labourers with temporary status.

8. Despite conferment of temporary status, the services of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Dispute Act, 1947 on the ground of non-availability of work. A casual labourer with temporary status can quit service by giving one months notice.

9. If a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with. They will not be entitled to the benefit of encashment of leave on termination of services.

10. The Department of Telecommunications will have the power to make amendments in the scheme and/or to issue instructions in detail within the frame work of the scheme."

Exhibit W/1 shows that the workman was granted temporary status. Thus it is established in view of the scheme that the workman rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days.

7. Exhibit W/2 & W/3 are paper Nos. 2/6 to 2/9. These are filed to show that how many days the workman was engaged in each year starting from Nov-86 to May-1990. These papers are also admitted by the management witnesses. These papers are filed to show that he had worked more than 240 days during a period of twelve calendar months preceding the date with reference. This also corroborates and establishes that the workman had worked as casual labour for more than 240 days during the period of twelve calendar months preceding the reference and comes under the definition of continuous service as provided under Sec.-25 B(2) of the I.D. Act, 1947.

8. Exhibit W/4 is notice of retrenchment by non-applicant Bank under clause C of Sec-25-F of Industrial Dispute Act, 1947. This notice is also admitted by the management witnesses in their evidence. The notice shows that the workman was retrenched and he had been given one month pay on 6-6-90 in lieu of notice as required under clause (a) of Section 25 F of the I.D. Act. The reason attributed vide letter dated 7-3-90 for retrenchment of three workman out of 81 workmen was that the casual labours having break in service of more than one year are to be retrenched. This appears to be not justified because vide order dated 26-2-90 (Exhibit W/1) the workman was found in continuous service of more than a year and was placed under temporary status just about 10 days before. However it also appears that the provision of Section 25 F clause (b) of the I. D. Act, 1947 was not complied before terminating the workman. Thus it is clear that it is a mandatory provision under Section 25 F (b) of the I.D. Act to pay compensation of the services rendered by the workman at the time of retrenchment. It appears to be not disputed in view of admission of the notice (Ext W/4) that the workman does not come within the excluded categories mentioned in Section 2 (oo) of the I.D. Act, and therefore non-payment of the mandatory benefits which are statutory in nature vitiates the termination order passed by the non-applicant/management.

9. The workman Ram Kumar Basor is examined in the case. He has supported his case. The Learned Counsel for the management has drawn attention of his cross-examination where he has stated that he was on muster roll. He has also stated that he was doing work of digging ditch for cable and the work was ended. He

has further stated that after ending the work, his service was terminated and ended. It is argued that this shows that he was engaged for a fixed work and it comes under the provision of Section 2 (oo)(bb) of the I.D. Act and there was no retrenchment. As such, he is not entitled to any relief under the provision of Section 25 (F) of the I.D. Act. I donot agree with this view of the learned counsel for the management because in view of the documentary admitted evidence, the oral evidence is not to be relied specially as the workman appears to be illiterate of the weaker section of the society. The notice (Exhibit W/4) proves that he was retrenched and order dated 26-2-90 of the S.D.O. Telephone-II, Jabalpur (Exhibit W/1) clearly proves that he was placed under temporary status w.e.f. 1-10-89. Thus the evidence of the workman establishes that the action of the management in terminating his service by retrenchment w.e.f. 7-6-90 was not justified.

10. On the other hand, the non-applicant/management has also adduced oral evidence. The management witness Shri K. K. Acharya has supported the case in examination-in-chief but in cross-examination he has admitted the documents filed by the workman. The relevancy of the documents has already been discussed above. The said documents contradict the evidence of this witness adduced in examination-in-chief. His evidence thus, fails to prove the case of the management. Another management witness Shri D.C. Wasnik is Engineer in the said department. In cross-examination, he has also admitted the documents filed by the workman by which it is established that the termination of service of the workman by retrenchment was not justified. Accordingly this issue is decided in favour of the workman and against the management.

11. Issue No. 2:

On the basis of the discussion made above, it is proved that the action of the management in terminating the service of Shri Ram Kumar Basor, w.e.f. 7-6-90 is not justified. The management is directed to reinstate the workman Shri Ram Kumar Basor from the date of retrenchment, i.e. w.e.f. 7-6-90 with 50% back wages. Accordingly this issue is decided.

12. In the result, the award is passed without any order to costs.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 21 अप्रैल, 2010

का. आ. 1285.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 53/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-4-2010 को प्राप्त हुआ था।

[सं. एल-40025/2/2010-आई आर(डी यू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 21st April, 2010

S. O. 1285.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 53/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 21-04-2010.

[No. L-40025/2/2010-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT : Shri Ved Prakash Gaur, Presiding Officer

Dated the 25th day of March, 2010

INDUSTRIAL DISPUTE L.C.No. 53/2004

Between :

Sri Sanaboyina Aruna Gangadhara Prasad,
R/o 6 GM/46, Upper Sileru,
Gudem Kothaveedhi Mandal,
Seeleru Post, Visakhapatnam District.Petitioner

AND

1. The Divisional Engineer,
Transmission Installation,
Bharat Sanchar Nigam Ltd.,
Visakhapatnam.
2. The Dy. General Manager Telecom,
Transmission Installation,
Bharat Sanchar Nigam Ltd.,
Vijayawada.
3. The Divisional Engineer,
Transmission Installation,
Bharat Sanchar Nigam Ltd.,
Visakhapatnam.Respondents

APPEARANCES :

For the Petitioner : M/s. V.V. Ravi Prasad & J.V. Rama
Kishan, Advocates

For the Respondent : Sri R.S. Murthy, Advocate

AWARD

This petition under Sec.2 A (2) of the I.D. Act, 1947 has been filed by Sri Aruna Gangadhara Prasad for reinstating him into service of the management with consequential service benefits in light of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No.8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. It has been alleged by that Petitioner workman joined as driver on casual basis in the office of Sub-Divisional Engineer, Telecom Transmission Installation, Visakhapatnam on 15-6-2001 on a consolidated pay/wage of Rs. 2500 per month. The Petitioner discharged his services to the full satisfaction of his superiors and the nature of his job is of perennial nature. He worked for 2 years continuously without any break and requested the management to regularise his services. He was issued an identity card by the management but to the utter surprise of the Petitioner, the management dispensed with the services of the Petitioner w.e.f. 21-4-2004 without assigning any reason or without any notice. The Petitioner has worked for more than 240 days but the management has not followed the provisions of Industrial Disputes Act, 1947 in terminating the services of the Petitioner. Hence, he has filed this petition.

3. Respondent filed counter statement denying the allegations of the Petitioner that Petitioner was engaged for a specific time who worked on contract basis for three months only. The work under Division of Transmission and Installation project completed long back and the said division is no more in existence. Petitioner workman was neither appointed nor engaged. He was engaged for a shortest span of 15 to 20 days when there was availability of work for the services of a driver on contract basis. As such, he is not entitled for regularization. He has not put in two years service as claimed by him, hence, the question of giving regular appointment does not arise.

4. Parties were directed to file their evidence. Petitioner filed affidavit in support of his claim petition and produced himself for cross examination. The Respondent has submitted affidavit of Sri. U. Rama Krishna, Sub-Divisional Engineer, Legal and has produced the xerox copy of the rules regarding destruction of accounts records, xerox copy of office memo dated 12-2-99 imposing ban on recruitment/engagement of casual labours in the department and office memo dated 15-6-99 regarding ban on engagement of casual labourers. It has been verified by the affidavit of Sri U. Rama Krishna, Respondent witness,

who appeared for cross examination on 1-4-2009, the Petitioner or his counsel were not present for cross examination, hence, cross examination of Respondent's witness was closed.

5. None appeared for the argument as the case was called for argument on 19-2-2010.

6. I have myself gone through the pleadings of the parties and evidence filed by the parties. It has to be seen in this case whether the Petitioner was disengaged from the services who has worked for more than 2 years without following the procedure laid down in the Industrial Disputes Act, 1947. The Petitioner claimed that he joined in the year 15-6-2001, what was the basis of joining the services of the Respondent has not been disclosed by him either in his claim petition or in his examination in chief through his affidavit. However, in his cross examination he has admitted that he was not given any appointment letter or termination letter. He has filed the certificate from Junior Telecom Officer, SDE(T), showing that he worked from 16-6-2001 till 31-3-2003 as casual driver. He has further filed the statement showing the number of the days worked by him in the year 2002 and 2003 which show that he worked for 287 days, w.e.f. 16-6-2001 to 30-4-2002, whereas he has worked for 135 days for the period during 3-8-2002 to 9-3-2003. The Respondent has challenged statement of Petitioner through his affidavit to whom the Petitioner has not mustered courage to cross examination. As such, the unchallenged testimony of the Respondent witness Sri U. Rama Krishna is fit to be accepted that the statement produced by the Petitioner is not genuine and he was not engaged by the Respondent as alleged by him. Since Petitioner himself has stated that he continuously worked from 16-5-2001 to 30-4-2002, vide statement produced by him and alleged to be true by him does not support the contention of the Petitioner. The Petitioner has not been able to prove that he has worked for more than 240 days as such, the provision of Sec.25F of the Industrial Disputes Act, 1947 is not applicable in this case. Since the mandatory requirement of provision of Sec.25F of the Industrial Disputes Act, 1947 has not been proved by the Petitioner, the Respondent has not committed any mistake in not giving any retrenchment compensation to the Petitioner. It appears that the Petitioner was engaged for the duty of driver as claimed by Respondent, on such dates, when his services were required by the Respondent. Thus, the Petitioner does not come within the definition of labour as contained in Sec.2(s) of the Industrial Disputes Act, 1947.

7 From the above discussion, this tribunal is of the opinion that the Petitioner was not an employee of Respondent, there was no relationship of master and

servant. Petitioner was not a workman as defined in the Industrial Disputes Act, 1947. Hence, he is not entitled for any relief and petition deserves to be dismissed. Hence, this awarded.

Award passed accordingly, Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 25th day of March, 2010.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner	Witnesses examined for the Respondent
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WW1 : Sri S. Aruna Gangadhara Prasad Rama Krishna	MW1 : Sri U. Krishna
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Documents marked for the Petitioner

Ex. W1: Identity Card
Ex. W2: Certificate of SDOE dated 31-3-2003
Ex. W3: Certificate given by S.D.E., B.S.N.L.,
Visakhapatnam dt. 1-5-2004

Documents marked for the Respondent

NIL

नई दिल्ली, 21 अप्रैल, 2010

का. आ. 1286.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 229/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-4-2010 को प्राप्त हुआ था।

[सं. एल-40025/3/2010-आई आर(डी. यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 21st April, 2010

S. O. 1286.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 229/2004) of the Central Government Industrial Tribunal-cum-Labour Court Hyderabad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 21-04-2010.

[No. L-40025/3/2010-IR(DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD****Present : Shri Ved Prakash Gaur**
Presiding Officer

Dated the 2nd day of February, 2010

INDUSTRIAL DISPUTE L.C.No. 229/2004**Between :**Smt. B. Appalakonda,
W/o B. Srinivasa Rao,
D.No. 10-4-52, Kotta Kovila,
Near Anasapuvuri Street,
Vizayanagaram.

.....Petitioner

AND1. The Junior Telecom Officer,
Departmental Telegraph Office,
Vizayanagaram.2. The General Manager,
Telecom District,
Vizayanagaram.

.....Respondent

APPEARANCES :For the Petitioner : Sri D. Jagannadha Murty,
Advocate

For the Respondent : Sri Karoor Mohan, Advocate

AWARD

This petition under Sec. 2 A(2) of the I. D. Act, 1947 has been filed by on the basis of the pronouncement of the Hon'ble High Court of Andhra Pradesh reported in the matter of Sri U. Chinnappa and M/s. Cotton Corporation of India and two others in W.P. No.8395 of 1989 dated 3-8-1995.

2. The workman has submitted that she joined the services of Respondent as sweeper in the year 1994 and carried out the said job on daily wage basis, but her services were not regularized even after uninterrupted service for 9 years. Petitioner made several representations to the Respondent management for regularization of her services but no action was taken by the management nor her services were regularized. However, the Respondent No.1 forwarded the representation of the Petitioner to the Respondent No.2 vide letter No.DTO/VZM/95-2002 dated 20-5-2002 for necessary action. The Petitioner has further submitted that she is physically handicapped. Even though she has discharged her duties to the satisfaction of her superiors. The Respondent management issued circular to regularise the services of all part time workers on full time basis vide letter No.269-13/99-SJN-II dated 25-8-2000 wherein it was

mentioned that part time workers who has worked for less than 4 hours per day and who has completed 240 days in preceding 12 months may be converted into full time casuals. But the Respondent has not converted the services of the Petitioner into a full time worker. The Chief General Manager, Telecom, A.P. Circle, Hyderabad also issued direction to convert the services of such part time casual labourers who worked for less than 4 days as full time workers, but said direction was also not fulfilled by Respondent No.1 or observed by Respondent No.1. The Petitioner was not allowed to work from 1-2-2004 onward which amount to illegal termination of the Petitioner without any notice or without any retrenchment compensation. It has been stated that the Petitioner was drawing Rs.1485- per month as her wages. The Petitioner approached Hon'ble Central Administrative Tribunal by filing OA 138/2004 against not allowing her to perform her duties which was dismissed by Hon'ble Central Administrative Tribunal for want of jurisdiction with direction to seek the remedy from appropriate forum. Thus, the Petitioner has filed this present claim petition for reinstatement in the services of a part time sweeper with back wages.

3. Counter statement has been filed by the Respondent management. The Respondent management has denied the contention raised by the Petitioner in her claim statement. The Respondent has submitted that Petitioner is not an employee of Bharat Sanchar Nigam Ltd., as she was not employed by Bharat Sanchar Nigam Ltd., nor any appointment letter was given to her by any competent authority. The Petitioner was not a part time worker appointed or engaged by the Bharat Sanchar Nigam Ltd. Therefore, circular No.269-13/99-SJN-II dated 25-8-2000 is not applicable in the case of the Petitioner. The Petitioner was not full or part time worker of the Respondent. She was not entitled for either regularization or change of her category from part time to full time as claimed by her. Petition has got no force and deserves to be dismissed.

4. Parties were directed to produce their evidence as no domestic enquiry was taken place in the case of Petitioner. The Petitioner has filed xerox copies of documents, time sheet dated 20-7-94 as Ex.W1, payment voucher maintained by Respondent dated 26-7-95 as Ex.W2, her representation to Respondent No.2 is Ex.W3, letter of R1 to R2 dated 20-5-2002 is Ex.W4, Wage sheet for the month of September, 2003 Ex.W5, copy of the orders of Hon'ble Central Administrative Tribunal Ex.W6 and W7, service certificate issued by the Respondent is Ex.W8, part time wage statement Ex.W9, certificate of the medical board Ex.W10 and circulars of department of telecom Ex.W11 and W12. Ex.W13 is regularization order of Y. Subba Rao dated 16-9-2003, Ex.W14 is reinstatement order of T. Anasuya dated 24-2-2003 and Ex.W15 is award of Labour Court, Visakhapatnam in IT ID(C) No.20/99 dated 24-4-2000. Apart from this documentary evidence Petitioner has filed her own affidavit in the form of her examination in chief and

has produced herself for cross examination by the Respondent and she has been cross examined at length.

5. The Respondents have filed copy of the representation of B. Appalakonda dated 16-2-2004 for her reinstatement, letter No. E-7/Genl.Corr/2003-04/4, dated 21-1-2004, Letter No.N-269-13/99-STN-II dated 25-8-2000, Letter NO.TA/STB/20-2/Corr/KW-ii/2001/22, dated the 5-10-2000 and letter No.269-7/2002/Per.IV dated 27-2-2003 and filed affidavit of Sri K. Jagannadha Rao and produced him for cross examination.

6. Both the parties have filed written arguments. I have gone through the written arguments submitted by the parties before this tribunal and I have also gone through the pleadings, documentary and oral evidence of the parties. It is contended by Petitioner that she was appointed in the year 1994. She has filed her affidavit as evidence order 18 Rule IV of C.P.C. and has stated that she joined as sweeper on daily wage basis since 1994. However, during the course of her cross examination she has stated that she was offered sweeper's job on the death of her mother-in-law in the year 1993.

7. The Learned Counsel for the Respondent has argued that the Petitioner has submitted a representation wherein she stated that her mother-in-law died in the year 2000 and after death of her mother-in-law the Petitioner started working in the organization of the Respondent. However, the Petitioner has herself filed Ex. W3 application for her regularization wherein she herself has submitted that prior to 19-11-2000 her mother-in-law has worked and upon her expiry she was asked to start working. This representation has been proved by the Petitioner herself during the course of her examination in chief. This proves that the Petitioner was not engaged in the year 1993 or 1994 as being claimed by her in her claim petition. I have considered this argument and I have also perused the contents of Ex. W3 wherein the Petitioner herself has stated that prior to 19-11-2000 her mother-in-law has worked for the Respondent. This proves that the contention of the Petitioner that she was engaged in the year 1994 by the Respondent No.1 is baseless and this contention of the Petitioner can not be accepted. However, Petitioner has further contended that she has worked for more than 9 years up to 31-1-2004. In support of this contention she has filed documents Ex. W1 to W15. Ex. W1 is the xerox copy of a over time slip but neither it's original has been proved nor this over time slip can prove the contention of the Petitioner that she was offered a job in the year 1994. Because she herself has stated that prior to 2000 her mother-in-law used to work in Respondent's organization. The Petitioner has filed xerox copy of a payment receipt that she was paid a sum of Rs. 109 towards sweeping charges but when this payment was made, who made this payment is not legible. As such, credence can not be given to this document. Ex. W3 is the representation of the Petitioner

for regularization of her services which was given without any date nor disclosing the year. However, there is a forwarding letter of S.D. Trunks dated 20-5-2002 forwarding the representation of Petitioner part time sweeperess. She has also filed Ex.W5 labour charge for the month of September, 2003 wherein her name finds mention at Sl. No. 4 and an amount of Rs.1485 is shown against her name. She has further filed the order of Hon'ble Central Administrative Tribunal in the O.A. No. 138/2004 wherein Hon'ble Central Administrative Tribunal has dismissed the Petition on the ground of lack of jurisdiction. Petitioner has further filed the circular letters of DOT, Ex.W11, W12 and W13 and xerox copy of the award passed in IT ID No.20/99 by Industrial Tribunal, Visakhapatnam. In the matter of T. Anasuya Visakhapatnam. S.D.E., Telecom ordering her reinstatement.

8. The Petitioner has stated that she used to work in leave vacancy on oral instructions. This statement of the Petitioner during cross examination, categorically proves that the Petitioner has not worked either on part time basis or full time basis as a casual labourer on daily wages but she worked as a substitute in the leave vacancy that too on oral instructions meaning there by that the contention of the Petitioner that she worked continuously for 9 years is not proved. During course of cross examination Petitioner has stated that regular sweeper Beerapu Saramma retired on 1-1-2001, from that date she had worked regularly upto 2004. But she has not been able to produce any document which can prove that she has worked from 1-1-2001. However, she has filed copy of her representation and alleged forwarding letter of the Respondent dated 23-5-2002. This proves that the Petitioner worked as a part time sweeper and she made a representation for regularization. No doubt, she has stated that her services are liable to be converted to full time casual labour as per circular letter No.269-13/99-STN.II dated 25-8-2000, a copy of this circular has been filed by the Petitioner. It has been mentioned that part time casual labour with less than 4 hours duty per day who has worked for 240 days in the preceding 12 months may be converted into full time casual labourers to the extent of the members indicated against respective field units. This shows that restriction was imposed by this circular to restrict the number of workers to sanctioned strength of the workers. However, the forwarding of this representation to higher authorities shows that the Petitioner was working as part time sweeperess during the month of May, 2002 and the forwarding authority has attached attendance/payment particulars since March, 2001. This proves the contention of the Petitioner that she has worked in the Respondent's management organization for more than 240 days, because the forwarding letter which had not been denied by the Respondent's witness amply proves the contention of the Petitioner that she worked for more than 240 days preceding her retrenchment or denial of duty by the Respondent

management. Ex. W 4 forwarding letter disclose that the attendance slip of the Petitioner since March, 2001 was forwarded to the higher authorities, which means that Petitioner was working with the Respondent atleast from March, 2001. The Petitioner has filed labour charge statement for the month of September, 2003 which has not been denied by the Respondent. Respondent's witness in his cross examination has stated that Ex.W8 and other 12 sheets are correct or not he cannot not say because the original is not available in the office. The Petitioner has filed wage sheet for August, 2002, November, 2002 and January, 2003, February, 2003, April, 2003, May, 2003 and statement of the duties of staff, where the name of Petitioner is find at S.No.12 shows that Petitioner has been working as a part time sweeperess with R1 from March, 2001 till date of 2004. Thus the case of the Petitioner is covered under Sec. 25 of the Industrial Disputes Act, 1947 because from the documentary and oral evidence of the Petitioner this court is satisfied that the Petitioner has worked for more than 240 days in the year precedings date of her disengagement from the daily wage job.

9. The learned Counsel for the Respondent has argued that the Petitioner's appointment was not made according to the rules prevalent for the appointment of public services job. He has not been able to contradict the documents produced by the Petitioner which amply proves that the Petitioner has worked in the Respondent's organization from March, 2001 to the year 2004 and her services has been terminated without any notice or without following the procedure prescribed for the discharge or dismissal of public services employees. Thus, the provisions of Sec.25F of the Industrial Disputes Act, 1947 comes to the help of the Petitioner wherein it has been mentioned that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer only, a) the workman has been given one month notice in writing indicating the reasons for retrenchment and the period of notice as expired, or the workman has been paid in lieu of such notice, wages for the period of notice, b) the workman has been paid at the time of retrenchment compensation which shall be equivalent to 15 days average pay.

10. Learned Counsel for the Petitioner has argued that provision of Sec.25F of the Industrial Disputes Act, 1947 is mandatory in nature and it has been incorporated by the legislature to help the workmen from illegal retrenchment or termination of the services by employer on hire and fire basis. He has argued that the Respondent of this case has taken the services of the Petitioner for more than three years uninterrupted as proved by Petitioner's evidence both oral and documentary but while terminating her services or disengaging her from the work the principles and procedure laid down under Sec.25F of the Industrial Disputes Act, 1947 has not been observed

by the Respondent as such, the action of the management in absolving the Petitioner from her duty is against the provisions contained in Sec. 25F of the Industrial Disputes Act, 1947 and thereby the action of the management is unjust, illegal and violative of the principles of Sec.25F of Industrial Disputes Act, 1947.

11. I have considered this argument and have also gone through the provisions of Sec.25F of Industrial Disputes Act, 1947 and entire documentary as well as oral evidence of the Petitioner as well as that of the management witness from which I have come to the conclusion that the Respondent has taken part time sweepers work from the Petitioner from March, 2001 to the date of her disengagement in the year 2004. However, the management has neither given a notice of disengagement as contained in Sec. 25F of the Industrial Disputes Act, 1947 nor retrenchment compensation has been given to her. The Petitioner has worked for more than 240 days as required for the retrenchment compensation under Sec.25 F of the Industrial Disputes Act, 1947 which has not been observed in the present case and as such this tribunal is of the opinion that the action of management in terminating the services of the Petitioner by oral order is against the provisions of Sec.25F of the Industrial Disputes Act, 1947 and same can not be sustained, it deserves to be quashed and Petitioner is entitled for the reinstatement as daily wage sweeper. The petition is allowed as stated above, the Respondent is directed to reinstate the Petitioner as part time sweeperess within two months from the date of receipt of this order and pay the Petitioner part time sweeperess wage from the date Petitioner is reinstated in the services. However, Petitioner is not entitled for back wages as she was part time sweeperess and she has not performed any job during this period. Thus, this award.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 2nd day of February, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. B. Appalakonda	MW1: Sri K. Jagannadha Rao

Documents marked for the Petitioner

Ex.W1:	Copy of time sheet dated 20-7-94
Ex.W2:	Copy of payment voucher maintained by Respondent dated 26-7-95
Ex.W3:	Copy of her representation to Respondent No. 2

- Ex.W 4: Copy of letter of R1 to R2 dated 20-5-2002
- EX.W 5: Copy of Wage sheet for the month of September, 2003
- EX.W 6: Copy of the orders of Hon'ble Central Administrative Tribunal dt.10-6-2004
- EX.W 7: Copy of the orders of Hon'ble Central Administrative Tribunal dt. 4-2-2004 .
- EX.W 8: Copy of service certificate issued by the Respondent
- EX.W 9: Copy of part time wage statement
- EX.W 10: Copy of medical certificate
- EX.W 11: Copy of Ir.No.269-13/99-STN.II dt. 25-8-2000 of Respondents
- EX.W 12: Copy of the Ir.No.TA/STB/20-2/Corr/PTS/2000 dt 26-4-2001/1-5-2001
- EX.W 13: Copy of regularization order of Y. Subba Rao dated 16-9-2003
- EX.W 14: Copy of reinstatement order of T. Anasuya dated 24-2-2003
- EX.W 15: Copy of award of Labour Court, Visakhapatnam in IT ID(C) No.20/99 dated 24-4-2000.

Documents marked for the Respondent

NIL

नई दिल्ली, 21 अप्रैल, 2010

का. आ. 1287.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्रीय विद्यालय के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 104/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-4-2010 को प्राप्त हुआ था।

[सं. एल-42025/3/2010-आई आर(डी यू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 21st April, 2010

S. O. 1287.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 104/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Kendriya Vidyalaya and their workman, which was received by the Central Government on 21-04-2010.

[No. L-42025/3/2010-IR(DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

Present : SHRI Ved Prakash Gaur, Presiding Officer

Dated the 25th day of March, 2010

INDUSTRIAL DISPUTE L.C.No. 104/2005

Between :

Sri Saniboina Kondala Rao,
S/o S. Venkanna,
R/o D.No.252, Ward No.27, 8th Street,
Sriramnagar, Uppara Colony, Gajuwaka,
Visakhapatnam.

.....Petitioner

AND

The Principal,
Kendriya Vidyalaya,
Visakhapatnam Steel Plant,
Sector-I, Visakhapatnam.

.....Respondent

APPEARANCES:

For the Petitioner : M/s. D.Ravindra Nath, M.V.S.
Narayana, J.S.C. Reddy,
Srinivasa Rao & S.Kasi
Viswanatham, Advocates

For the Respondent : Sri D.Ramesh, Advocate

AWARD

This petition under Sec.2 A (2) of the I.D. Act, 1947 is filed by Sri S. Kondala Rao for reinstatement of his services with back wages from Respondent in light of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No.8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The Petitioner has alleged that he joined as Thota Mali in the month of September, 1998 on a monthly salary of Rs.900/- in the Kendriya Vidyalaya, Visakhapatnam Steel Plant. Due to his regular attendance and good work his salary was increased from Rs. 900 to Rs. 1500 on 1-1-2002. The Petitioner was hopeful that his job will become permanent and he made an appeal to the opposite party but no response was given by the other party. Petitioner further contended that he worked under the opposite party till 30-4-2004, i.e., for more than 4 years, but on 1-5-2004, the opposite party discharged Petitioner from his services without any reason or giving any notice.

3. Petitioner gave a notice through his lawyer to the opposite party on 20-10-2004 which was served on opposite

party but no response was given by the Respondent, hence, this petition. Petitioner has filed xerox copy of the legal notice, xerox copy of attendance register, certificate Principal of Kendriya Vidyalaya, Visakhapatnam Steel Plant on the letter head of 'Parent Teacher Association', Kendriya Vidyalaya, Steel Plant. To effect that Sri S. Kondala Rao is working in this Vidyalaya as casual labour (Mali) since 20-6-2002 and he is being paid daily wages from Parent Teacher Association of this Vidyalaya. He has filed another certificate dated 18-6-2002 on the letter head of 'Parent Teacher Association', certifying therein that Sri S. Kondala Rao is working as casual labour since last 4 years and has been paid daily wages from PTA of Vidyalaya.

4. Respondent has filed counter statement wherein they have denied the allegation made in the claim petition, they have alleged that the Kendriya Vidyalaya has never engaged the services of the Petitioner workman since the opposite party never engaged the services of the Petitioner workman, hence, the question of regularisation did not arise. His claim that he has served the Respondent till 30-4-2004 and he was discharged on 1-5-2004 is also incorrect since, he was not engaged by the Respondent at any time, hence, discharge of Petitioner from service does not arise by the Respondent. Petitioner is not entitled for reinstatement in Respondent Kendriya Vidyalaya and his petition deserves to be dismissed. Respondent has filed xerox copy of letter No.F.12-13/99-KVS (Admn.I), regarding privatization of certain services like., watch and ward duties gardening and cleaning of services of Kendriya Vidyalaya, letter dated 3-10-2005 from Secretary, 'Parent Teacher Association', appointing Sri S. Kondala Rao as gardener. Letter dated 4-7-2003 from the Secretary, 'Parent Teacher Association', requesting the Respondent Kendriya Vidyalaya to allow Sri S. Kondala. Rao to enter Kendriya Vidyalaya premises for gardening work. Respondent have also filed receipts given by Petitioner in token of receipt of his salary from 'Parent Teacher Association', for the month of July, 2002, August, 2002, September, 2002, April, 2003, May, 2003, July, 2003, August, 2003, September, 2003 and October, 2003.

5. Petitioner has filed his affidavit in support of his claim petition. He presented himself for cross-examination but Respondent did not appear to cross examine the Petitioner.

6. I have heard the ex-parte arguments of the Learned Counsel for the Petitioner who has submitted his written arguments.

7. In the light of written arguments submitted by the Petitioner's counsel I have gone through the pleadings of the claim statement Petitioner, and counter statement filed by the Respondent and documentary evidence submitted by both the parties. Petitioner has filed his affidavit in support of claim statement wherein he has written that he has joined as casual labour in the month of September,

1998 under opposite party and worked till 30-4-2004 which prove from documents Sl.No.1 and 2.Document No.1 and 2 are certificates of experience dated 18-6-2003 and 18-6-2002 issued by the Principal of Kendriya Vidyalaya on letter head of 'Parent Teacher Association', Kendriya Vidyalaya, Steel Plant. It certified that Sri S. Kondala Rao is working in Kendriya Vidyalaya as causal labour for last 4 years. This certificate has been issued on the letter head pad of the Parent Teacher Association of Kendriya Vidyalaya. Petitioner has not been able to contradict and challenge the content of this certificate he has also placed reliance on this certificate which prove that though the Petitioner worked in the Kendriya Vidyalaya but the certificate was not issued to him on the letter head pad of Kendriya Vidyalaya but on the letter head pad of Kendriya Vidyalaya - Parent Teacher Association. The Respondent has filed xerox copy of the letter of Secretary, Parent Teacher Association, Kendriya Vidyalaya Steel Plant dated 3-10-2005 addressed to the Principal, Kendriya Vidyalaya Steel Plant informing him that Parent Teacher Association, Kendriya Vidyalaya Steel Plant has appointed Sri S. Kondala Rao as Gardener on part time basis who has been working in the same capacity for the last 4 years whose services has been kept at the disposal of Kendriya Vidyalaya for maintaining the school garden. Previously he was paid Rs. 1200 which has been enhanced to Rs. 1500 PM vide Parent Teacher Association resolution dated 20-11-2002. He has been given an amount of Rs. 3000 as advance in April, 2003. There is another letter dated 4-7-2003 from Secretary of Parent Teacher Association to Principal, Kendriya Vidyalaya informing him that Parent Teacher Association has appointed Sri S. Kondala Rao as gardener and they have requested the Principal to allow Sri Kondala Rao to enter the school premises for performing the work of gardener. Parent Teacher Association has also furnished xerox copy of the receipt of payment of wages signed by Sri Kondala Rao. The Petitioner has not denied the content of letter of Parent Teacher Association and payment receipts signed by the Petitioner, nor he has make any submission in his written argument. Though Petitioner has alleged in his claim petition that he joined as casual labour in Kendriya Vidyalaya in September, 1998 but what was the basis of his joining in Kendriya Vidyalaya has not been disclosed by the Petitioner whereas the documentary evidence furnished by the Respondent shows that the Petitioner was appointed by Parent Teacher Association of Kendriya Vidyalaya to work as gardener in Kendriya Vidyalaya and payment was made by them. Documents submitted by Respondent, shows that work was given to Petitioner by Parent Teacher Association. Who has signed the receipt, payment received from Parent Teacher Association these documents has not challenged by Petitioner. Thus, non-challenging the content of documents produced by the Respondent contradict the allegation of the Petitioner that he was working in Kendriya Vidyalaya and was an employee of Kendriya Vidyalaya.

8. It is the duty of the Petitioner to prove that a relationship of master and servant exists between Petitioner and Respondent. The Petitioner of this case has not been able to support and prove the relationship of master and servant between himself and Respondent No.1.

9. The Respondent have alleged that they have not appointed Petitioner at any point of time, to this allegation of the Respondent the Petitioner has not filed any counter nor has contradicted their stand either in his own claim petition nor in his affidavit in support of his claim petition. He has not stated that he was appointed by Kendriya Vidyalaya at any point of time to work as Mali on casual labour basis. Thus, the Petitioner has not been able to prove the relationship of master and servant between himself and Respondent No.1. Apart from this evidence, the documentary evidence available on record shows that the Petitioner was appointed by Parent Teacher Association of Kendriya Vidyalaya who has not been made a party nor the Petitioner sought any relief against Parent Teacher Association of Kendriya Vidyalaya. Hence, the claim petition is defective and devoid of any merit. Petitioner is not entitled for relief claimed by him against Respondent and petition deserves to be dismissed. Hence, this award.

Award passed accordingly. Transmit.

Dicated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 25th day of March, 2010.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Saniboina Kondala Rao	NIL

Documents marked for the Petitioner

Ex.W1:	Copy of certificate given by Kendriya Vidyalaya Steel Plant, dt. 18-6-2002
Ex.W2:	Copy of certificate of experience given by Principal dt.18-6-2003
Ex.W3:	Copy of attendance register sheets dt. 1-7-03 to 30-4-2004
Ex.W4:	Copy of lawyer's notice dt. 28-10-2004
Ex.W5:	Copy of postal acknowledgements

Documents marked for the Respondent

NIL

नई दिल्ली, 21 अप्रैल, 2010

का. आ. 1288.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.पी.डब्ल्यू.डी.

के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1 नई दिल्ली के पंचाट (संदर्भ संख्या 83/06) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-4-2010 को प्राप्त हुआ था।

[सं. एल-42012/37/2006-आई आर(डी. यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 21st April, 2010

S. O. 1288.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 83/06) of the Central Government Industrial Tribunal-cum-Labour Court No. I, New Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of CPWD and their workman, which was received by the Central Government on 21-04-2010.

[No. L-42012/37/2006-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. I, KARKARDOOMA COURTS COMPLEX, DELHI**

I.D.No. 83/06

Shri Surender Kumar through
The General Secretary,
All India CPWD (MRM)
Karamchari Sangathan,
House No.4823, Gali No.13,
Balbir Nagar Extension, Shahdara,
New Delhi-110032.

...Workman

Versus

The Executive Engineer,
C. P. W. D.
B-Division, New Delhi.

...Management

AWARD

Surender Kumar joined services of the management as Beldar on 23-3-87. He breathed his last on 19-1-2004. His gratuity was released in favour of his widow, namely, Smt. Prem. She claimed that pensionary benefits may be released in her favour. Her claim was declined. She approached All India CPWD (MRM) Karamchari Sangathan (hereinafter referred to as the Union) for help. Claim statement was filed by Smt. Prem before the Conciliation Officer through the Union. When conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42012/37/

2006-IR(DU), New Delhi, dated 17-10-2006, with the following terms:

“Whether the demand of the All India CPWD (MRM) Karamchari Sangathan for regularization of services of Late Shri Surender Kumar, Beldar w.e.f. 22-3-87 is legal and justified?” If yes, to what relief the legal representative(s) of the late workman are entitled to and from which date?”

2. Claim statement was filed by the widow of the deceased Surender Kumar pleading that her husband served the management as daily rated employee for at least 16 years. He had put in 240 days of continuous service in different calendar year. He acquired a status of permanent employee, in view of law laid by the Apex Court in *Yashwant Hari Katakhar* (1996)(7)S.C.C. 113. Though gratuity was released in her favour by the management, yet no pensionary benefits were released. Her husband was entitled for regularisation in the service of the management, since persons junior to him have been regularized vide order dated 30-9-2004. It has been claimed that services of Surender Kumar, the deceased workman, may be regularized w.e.f. 22-3-87 and pensionary benefits may be released in favour of his legal heirs.

3. Management demurred the claim of Smt. Prem pleading that there was no right available to deceased Surender Kumar to claim regularization. Though temporary status was accorded to him, yet for claiming regularization he was to be brought on permanent establishment through regular selection process for group ‘D’ post. He was not selected for group ‘D’ post, hence he never acquired a status of regular employee. Shri Ram Parshad Tewari, whose date of appointment was 10-1-91, was regularized, vide order dated 22-2-2001 passed by Central Administrative Tribunal. Since the management was under an obligation to comply the judicial pronouncement, the claim of Prem nowhere stands on parity for regularization of her deceased husband. It has been projected that in pursuance of circular of Department of Personnel and Training dated 10-9-93, 50% of services rendered under temporary status would be counted for the purpose of retrieval benefits, when employee is regularised in the service of the management. When services of Surender Kumar were never regularised, the said circular does not come to espouse the case of his widow. It is pleaded that the claim petition is devoid of any merits and liable to be dismissed.

4. Smt. Prem (WW 1) and Satish Kumar Sharma (WW2) testified facts in support of the claim. Shri C.N.Suresh, Executive Engineer, deposed facts on behalf of the management.

5. Arguments were heard at the bar. Shri Satish Kumar Sharma, authorised representation, advanced

arguments on behalf of the widow of deceased workman Shri Anmol, authorized representative raised submissions on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

6. As emerge out of the facts testified by Smt. Prem and Shri Satish Kumar Sharma, Surender Kumar joined services with the management as beldar on 22-3-87. He expired on 19-1-2004. Shri C.N.Suresh, nowhere disputes those facts. He presents that Surender Kumar was granted temporary status w.e.f. 1st of September, 1993. It is an admitted case that till Shri Surender Kumar was in the service of the management, he was not selected for regularization of his job.

7. The Government of India framed a scheme called “Casual Labourers (grant of temporary status and regularization) Scheme 1993”. The said scheme came in force on 1-9-93 and was applicable to all casual labourers employed in the Ministries/Departments of Government of Indian and their attached and subordinate offices. Temporary status was to be conferred on all casual labourers who were in the employment on the date when the scheme came into force and who have rendered continuous service of at least one year. The conferment of the temporary status was not to have any reference to creation or availability of regular group ‘D’ post. Conferment of temporary status on a casual labourer would not involve any change in the duties and responsibilities of the employee. The engagement of an employee was on daily rate of pay on need basis. An employee on whom temporary status was conferred was not to be brought on to permanent establishment unless he was selected through regular selection process of group ‘D’ post.

8. On confirmation of temporary status, wages of an employee were to be paid on daily rate with reference to minimum scale of pay for regular group ‘D’ employees. D.A., H.R.A and C.C.A. Transport allowance of Rs.100 for A-1 and A cities and of Rs.75 for other places was also sanctioned w.e.f. 1st of August, 97. Benefit of increment after completion of one year service from 1-9-93 was available for calculation of daily wages. Leave entitlement @ one day for ten days of work was granted, which leaves were to be carried forward on regularization. Maternity leave to lady casual workers and paternity leave to male workers were admissible. Leave encashment was not admissible. Service upto 50% rendered in temporary status was to be reckoned for pensionary benefits after their regularization. After three years continuous service in temporary status, the employee was to be treated at par with temporary group ‘D’ employee for contribution to G.P.F., grant of festival allowance and food allowance. Productivity linked bonus was admissible only as casual labour until regularization. Leave were to be credited on 1st January and 1st of July

each year. Therefore, out of the scheme referred above, it is evident that till an employee is regularised, his services are not to be counted for pensionary benefits. He can avail counting of service upto 50% under temporary status, on being regularized on a group 'D' post.

9. 'Hue and cry had been raised by Smt. Prem that junior to her husband have been regularized. It has been projected that Ram Prashad Tiwari, Gurmail Singh and Dhanik Lal, who were junior to her husband were regularized. These facts are not disputed on behalf of the management. However it has been claimed that the services of the aforesaid persons were regularized in compliance of the orders of the Central Administrative Tribunal. Whether Surender Kumar could be regularized, using case of Ram Prashad Tiwari, Gurmail Singh and Dhanik Lal as a precedent? Such a proposition arose before the Apex Court in Uma Devi [2006 (4) S.C.C.I], wherein the Apex Court ruled that regularization of an employee similarly situated, may by the State in past shall not be treated as a precedent if it was done only pursuant to judicial direction, either of the Central Administration Tribunal or of the High Court and in some cases by the Apex Court. It would be expedient to reproduce the law so laid. which is extracted thus:

".....Though, there is a case that the State had made regularization in the past of similarly situated employees, the fact remains that such regularization were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those case cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate, the argument in that behalf has, therefore, to be rejected".

Therefore regularization of Shri Ram Prashad Tiwari, Gurmail Singh and Dhanik Lal can not be treated as precedent by Smt. Prem for claiming regularisation of the services of her husband.

10. However there is other facet of the coin. Shri Ram Parshad Tewari, appointed on 10-1-91, whose services were regularised on 05-08-2002. Gurmail Singh and Dhanik Lal, who were juniors to Surender Kumar, were regularized. Can management be permitted to discriminate Surender Kumar, who was at par with Ram Parshad Tewari, Gurmail Singh and Dhanik Lal. Answer lies in negative. Equality before law and equal protection of laws are fundamental rights of every person, ordains

Article. 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in 'privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated a like. Article 16 of the Constitution guarantees equality or opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, Government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions (c) termination of employment (d) and matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

11. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the Government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

12. Concept of equality guaranteed by Article 16 or the constitution is something more than formal equality and enables the under privileged groups to have a fair share by having more than equal chance and enables the state to give favoured treatment to those groups by achieving real equality. with reference to social needs. 'Protection discrimination' enabled, the state to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time.

13. Shri Ram Parshad Tewari, Gurmail Singh, Dhanik Lal and Surender Kumar are similarly situated since they were appointed in the services of the management as beldar. Shri Ram Parshad Tewari, Gurmail Singh and Dhanik Lal, who were junior to Surender Kumar, have been regularized. By no stretch of imagination they can be said to be placed on different pedestals. The management cannot create different categories for similarly situated persons, since it would amount to discrimination. It has not been shown that the case of Surender Kumar falls on different footings, based on classification of individuals, job or time. Since Shri Ram Parshad Tewari, Gurmail Singh and Dhanik Lal and claimant are similarly situated non regularization of the services of the claimant amounts to discrimination. This Tribunal will come to the rescue of late Surender Kumar and accord his fundamental rights by issuing a command to the management to regularize his service from retrospective date.

14. Neither Smt. Prem nor the management could bring it over the record as to on which date a regular vacancy was available regularization of the services of Shri Surender Kumar. In such a situation this Tribunal cannot command as to from which date services of Surender Kumar should be regularized. However, his services are to be regularized on or before 5-8-2002, the date when services of Ram Parshad Tewari were regularised. In view of the aforesaid discussions it is concluded that demand of Smt. Prem for regularisation of services of her husband, namely late Shri Surender Kumar, Beldar w.e.f. 5-8-2002 in regular Pay scale as revised from time to time is legal and justified. The management is commanded to regularize his services from the date referred above. An award is accordingly passed. It be sent to the appropriate government for publication.

DR. R. K. YADAV, Presiding Officer

नई दिल्ली, 21 अप्रैल, 2010

का. आ. 1289.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इक्वाइन ब्रिडिंग स्टड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 2/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-4-2010 को प्राप्त हुआ था।

[सं. एल-14012/84/2001-आई आर(डी यू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 21st April, 2010

S. O. 1289.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/2009) of the Central Government Industrial Tribunal-cum-Labour

Court No. II, Chandigarh as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Equin Breeding Stud and their workman, which was received by the Central Government on 21-04-2010.

[No. L-14012/84/2001-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE SHRI ASHOK KUMAR RASTOGI,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH

Case No. I.D. 2/2k9

Sh. Ramesh

C/o the President Distt. Agriculture Workers Union,

Gali No. 9, House No. 371,

Jawahar Nagar, Hissar

... Applicant

Versus

The Commandant,
Equin Breeding Stud,
Hissar

... Respondent

APPEARENCES

For the Workman : None

For the Management : Sh. K.K. Thakur, Advocate

AWARD

Passed on 6th April, 2010

Called out. Claimant not present. Representative of the Management present. Claim statement not filed.

Government of India vide Notification no. L-14012/84/2001-IR(DU) Dated 13-04-2009, by exercising its powers under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as the Act), referred the following Industrial Dispute for adjudication of this Tribunal:—

“ Whether the action of the management of the Commandant, Equin Breeding Stud, Hissar in terminating the services of their workman Shri Ramesh w.e.f. 11-09-1999 is legal and justified? if not, to what relief the workman is entitled to?”

Despite several dates the workman failed to present his claim statement. On the previous date on behalf of the workman Shri N.S. Chaudhary had requested time up to today for filing claim statement, documents list of witness and reliance. Shri Chaudhary who had made up the request on behalf of the workman on the last date is present today, but he submits that he has not the authority letter.

In this way, neither the workman is present nor he has filed claim statement. He has failed to put and establish his claim. He is entitled to no relief. The reference is, therefore, decided against him. Award is passed accordingly. Let the copy of the Award be sent to the Central Government for further necessary action. Record be consigned after due compliance.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 21 अप्रैल, 2010

का. आ. 1290.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. पी. डबल्यू. डी.के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 10/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-4-2010 को प्राप्त हुआ था।

[सं. एल-42011/66/2008-आई आर(डी यू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 21st April, 2010

S. O. 1290.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the management of C.P.W.D. and their workman, which was received by the Central Government on 21-04-2010.

[No. L-42011/66/2008-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 17th day of March, 2010

INDUSTRIAL DISPUTE No. 10/2009

Between :

1. Sri Prasant, V. Dondalkar,
H.No.3-3-977/C, Kutbiguda,
Kachiguda, Hyderabad-27
2. Sri D. Narasimha,
H.No. 3-38/2, Gowliduddy,
Sheerlingampally, Gachilbowli,
R.R. District (A.P.)

...Petitioners

AND

1. The Additional Director General of Works, SZ (II)
CPWD, 2nd Floor, G. Wing, Rajaji Bhawan,
Besant Nagar, Chennai
2. The Superintending Engineer (Co-ordination),
CPWD, Southern Region, 2nd Floor G. Wing, Rajaji
Bhawan, Besant Nagar, Chennai
3. The Chief Engineer, SZ(II), CPWD,
Nirman Bhawan, Koti Sultan Bazar,
Hyderabad

.....Respondents

APPEARANCES:

For the Petitioner : NIL

For the Respondent : NIL

ORDER

The Government of India, Ministry of Labour by its order No. L-42011/66/2008-IR(DU) dated 3-3-2009 referred the following dispute under Section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of CPWD and their workmen. The Reference is,

SCHEDULE

“ Whether the contract between the management of CPWD and their contractor with regard to employment of Shri Prasant V. Dondalkar and Shri D. Narasimha is bogus and sham? If yes, whether the demand of the workmen to receive payment directly from the management of CPWD is legal and justified and to what relief they are entitled to?”

The reference is numbered in this Tribunal as I.D. No. 10/2009 and notices issued to the parties.

2. On 17-3-2010, both parties called absent. There is memo dated 15-12-2009 on the record filed by workmen themselves to withdraw the case. Since the Petitioners are not coming to pursue the case rather filed memo to withdraw the case, the case is dropped treating it to have been withdrawn. Hence, this order.

Order passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 17th day of March, 2010.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner NIL

Witnesses examined for the Respondent NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 22 अप्रैल, 2010

का. आ. 1291.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एंव एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध

में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1 नई दिल्ली के पंचाट (संदर्भ संख्या 10/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-4-2010 को प्राप्त हुआ था।

[सं. एल-22012/22/2006-आई आर(सी एम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 22nd April, 2010

S. O. 1291.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2006) of the Central Government Industrial Tribunal-cum-Labour Court No.1 New Delhi now as shown in the Annexure in the Industrial Dispute between the management of Food Corporation of India and their workman, which was received by the Central Government on 22-04-2010.

[No. L-22012/22/2006-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.1, KARKARDOOMA COURTS COMPLEX,
DELHI**

I.D. NO. 10/2006

Sh. Dheer Singh & Ors.

The General Secretary

Food Corporation of India (Handling) Workers Union,

Arakashan Road, Paharganj,

New Delhi-110055

.... Workman

Versus

The Senior Regional Manager,

Food Corporation of India,

98 Neshwilla Road, Dehradun,

Dehradun-248001

....Management

AWARD

Food Corporation of India (in short the Corporation) was constituted by the Central Government under Section 3 of the Food Corporation of India Act, 1969 to undertake purchase, storage, movement, transport, distribution and sale of food grains and other food stuffs. The Corporation is the single largest public sector undertaking dealing with procurement, storage and distribution of food grains in the country. It has approximately 1700 storage depots throughout the country. It hired two godowns from state Warehousing Corporation and the State Govt. to run its depot at Jwalapur, Uttarakhand. It hired labours through Contractor, under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract

Labour Act). Bhairtya Shahkari Shram Sanvida Samiti Limited was the Contractor, who provided labour to the Corporation till 1994-95. The Samiti could not follow its obligation and the Corporation awarded adhoc contract to some other contractor. The Corporation notified process of awarding work to some other contractor, at which juncture the labours who were working under the previous contractor(s) raised an issue that they should be employed to carry out the work of loading unloading, stacking, re-stacking, de-stacking, weighing, standardization, sweeping, cleaning and dusting, as done by them at earlier occasions. Their claim was that by awarding work to a new contractor, they would be rendered jobless. F.C.I. Workers Union came into existence under whose banner 165 workers took up the cudgets. Various Writ Petitions were filed before High Court of Uttaranchal, in which petitions various issues were raised for adjudication. In the meantime the Food Corporation of India (Handling) Workers Union (in short the Union) came into existence. It also joined the fray of litigation before the High Court. Order granting some relief to the petitioners was passed, which order was assailed by way of later patent appeals before the Division Bench, by the Corporation. The Division Bench granted the Appeal vide its order dated 14-9-2005, directing the petitioners to approach the Industrial Adjudicator, through process of law. In the meantime the Corporation was directed to take the work from the workers included in the seniority list provisionally prepared, in case the Corporation operates its Jwalapur Depot. The Union approached the Conciliation Officer. Conciliation proceedings failed. The appropriate Government, vide order No.L-22012/22/2006-IR(CM-II), New Delhi dated 17-4-2006, referred the dispute to this Tribunal for adjudication, with the following terms:

“Whether the Food Corporation of India (Handling) Worker's Union have locus Standi to raise the dispute on behalf of the workmen? If so, the demand of the Food Corporation of India (Handling) Workers Union to declare that the workmen Shri Dheer Singh and 129 others were in direct employment with Food Corporation of India at Jwalapur Depot, District Haridwar, Uttaranchal during the year 1996-97 and their termination from service by the management in the guise of the closure of the depot is legal and justified? If so what relief the concerned workmen are entitled?”

2.Claim statement was filed on behalf of the workmen, by the General Secretary of the Union, pleading that the Union came into existence in the year 2001. It is a registered trade union under the Trade Union Act, 1926 and has its head office at 8654, Arakashan Road, Pahar Ganj, New Delhi.

The Union shall deal with the workers working in the Corporation at its different offices, depots, sheds, godown, railway siding, rail head etc., besides other ancillary workers. The aim and object of the union, as defined in its Constitution are as follows:

- (a) To organize the workers/employees of the Corporation.
- (b) To promote a cordial relation between the workers/employees of the Corporation.
- (c) To ameliorate the social, culture, civic and economic conditions of the members of the Union.
- (d) To promote, safeguard and farther civil and economic conditions of the members of the Union.
- (e) The Union shall strive to improve and ameliorate the condions of its members and also safeguard their interest by negotiations with their employers and only as a last resort by strike after giving the statutory notice to the concerned authority/authorities.
- (f) Federate with other appropriate organizations of workers having similar aims and objections.
- (g) To maintain good relations between the employers and the workers/employees.
- (h) To help the members in accordance with the provisions of Industrial Dispute Act, 1947.

3. The Corporation is exclusively utilizing its Jwalapur Food Storage depot for loading, unloading, stacking, re-stacking, de-stacking, weighment, standardization, sweeping, cleaning and dusting, purposes of the food-grains. Initially 165 workers were employed in the depot, out of whom 130 workers became the members of the Union and the dispute relate to them who have been rendered jobless, immediately after closure of the depot by the management. The workers, after a long drawn battle, were given relief by the Single Bench of High Court of Uttranchal in various Writ petitions filed, vide order dated 2-8-2004. The said order was assailed before the Division Bench and it quashed vide its order dated 14-9-2005. The Union raised the dispute before the Conciliation Officer and on failure of the conciliation proceedings, the appropriate Government made the instant reference for adjudication. It was claimed that the Union has locas standi to raise this industrial dispute.

4. 165 workmen started working in Jwalapur depot under a contractor in 1994-95. During that period a labour Co-operative Society, under the banner of one Shri Ram Avatar, was working as Contractor. In 1996 the said Society failed to pay wages to the workers and matter was taken up

before the Assistant Labour Commissioner (Central), Dehradun. By his efforts all 165 workers were paid their wages for complete 9 months, in his presence. Since the said Cooperative Society did not complete its terms of contract, the workers were paid direct by the management for the period from 19-3-1997 to 19-8-1997 for the work performed by them. Abruptly the depot was closed without compliance of the provisions of the Industrial Disputes Act, 1947 (in short the Act); during the period 20-8-1997 to December 1997. In December, 1997 the management floated a tender for award of a contract for a period of two years and M/s. Rana Transport company was chosen for the same. The Contractor could not execute the work and depot remained closed till 31-1-2004. In between, as per directions of the court, the management identified the labours and prepared their seniority list. When the depot was lying closed the Corporation and the F. C. I. Worker's Union entered into an agreement on 20-6-1998 wherein one of the issue was relating to Jwalapur depot. The terms of that agreement are extracted thus:

"2. It was agreed upon that 80 workers shall be employed at Jwalapur out of the list of 160 workers, who have worked there earlier under the contractor and the list and bio-data of those 80 workers shall be provided by the Union and the entire 160 workers are their members. If workload increases in future additional workers shall be provided by the Union on the request of the management out of the list of 160 workers as mentioned earlier".

5. In terms of the said agreement, the workmen became direct employees of the Corporation. But the management did not lift the closure of the depot. In pursuance of the order passed by the Single Judge on 9-2-2003, 130 workmen worked with the management from February, 2004 to April, 2004. Their wages have not been paid yet. The management have deployed more than 100 workmen in the said depot and provisions of Chapter V of the Act are applicable to it. Closure of the depot is in violation of the provisions of Section 25-O and compensation was not paid in terms of the provisions of Section 25-N of the Act. Actions of the management in closure of the said depot is therefore illegal. A claim has been made that workers, whose name are enlisted in Annexure-1 may be given job with full back wages and continuity of service.

6. The management demurred the claim pleading that Senior Regional Manager cannot be arrayed as a respondent and claim is liable to be dismissed for mis joinder of the parties. It was pleaded that services of the workmen

were engaged through the Contractor under the provisions of the Contract Labour Act. It has been pleaded that the wages of the workmen were paid for the period they worked. It has been denied that the workmen were directly engaged by the management at any point of time. It has been claimed that since they worked under a contractor, their claim lies against him and not against the management. It is pleaded that Dheer Singh, Bishanpal and Maipal Giri were the contractors and after expiry of their contract period. M/s. Rana Transport was appointed as new Contractor for a period of two years. Labour of ex-contractors created unrest and insisted for their employment by the newly employed contractor. Newly employed contractor was not ready to engage them and on account of that dispute, deliveries to the State Government were badly affected. To solve that problem a meeting was held at Regional level with F.C.I. Workers Union on 20-6-1998, wherein it was agreed that workers, who were employed by previous contractors may be employed with the existing contractors and list of the workers shall be provided by that Union. However existing contractor was not ready to engage the workers of the previous contractor(s). Prior to that meeting, a Committee of the Officers of the Corporation contacted ex-contractor, M/s. Dheer Singh on 13-5-98 to obtain list of 80 workers, along with their present addresses so that it may be given to M/s Rana Transport Co. Dheer Singh had not provided that list. The Corporation never agreed for direct engagement of labours. It was claimed that in the event of the closure of the depot, the contractor would have employed the workmen elsewhere. It is not the responsibility of the management to make payment to the workers. It has been pleaded that the Union had filed Writ Petition No. 6126/97 for abolition of the contract system at Jwalapur depot, which petition pends adjudication before Lucknow Bench of the High Court. A claim has been made that the workmen are not entitled for any relief of whatsoever nature.

7. In the rejoinder it was claimed that Dheer Singh never worked as a contractor. However, he worked as a labour mate.

8. On pleadings of the parties the following issues were settled by my Ld. Pre decessor.

1. Whether the claim petition is bad for misjoinder of parties?
2. Whether the petition is bad for misjoinder i.e. joining Senior General Manager or General Manager as Party? If so, its effect?
3. Whether the services of the workmen were engaged on Contract basis? If so, its effect?

4. Whether the workman is entitled to the relief claimed?
5. To what relief the workmen are entitled to?
6. As per terms of reference.

9. Dheer Singh (WW1), Vinod Kumar (WW2), Roop Chand (WW3), Sesh Raj (WW4) and Des Raj (WW5) tendered their affidavit as evidence. They were cross examined on behalf of the management. Affidavits were also tended by Kamal Singh, Narinder Kumar, Attar Singh, Lal Singh and Pramod Kumar as evidence. Despite opportunities granted, they opted not to appear before this Tribunal to undergo ordeal of cross examination. Since no opportunity could not accorded to the management to cross examine them, hence their depositions cannot be read in evidence. Shri K.S. Barwal, Manager, tendered his affidavit in evidence on behalf of the management. He was cross examined at length on behalf of the claimants. No other witness was examined by either of the parties.

10. Arguments were heard at the bar. Shri B.S. Sewak, authorised representative, advanced arguments on behalf of the claimants. Ms. Tamim Hashmi, authorised representative, advanced arguments on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1 and 2

11. First and foremost objection taken to the claim statement by the management is that by impleading Senior General Manager/General Manager as a party, the claimants had wrongly joined him. Accordingly to the management, it was the Corporation that should have been impleaded as a party. It was claimed that claim statement is liable to be rejected on that count. The claimant dispel submissions, so advanced.

12. Whether the Corporation or Senior General Manager, Jwalapur Depot, Distt. Haridwar (Uttanchal) was the employer? For the answer to this proposition this Tribunal is called upon to take into account the definition of the word "employer" given in the Act. Clause (g) of section 2 of the Act defines the "employer" as follows:

"Employer" means.

- (i) in relation to any industry carried on by or under the authority of any department of (the Central Government or a State Government) the Authority prescribed in this behalf or where no authority is prescribed, the head of the department,
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority."

13. The word "employer" is not specifically defined but merely indicates who is to be considered as "employer" for the purposes of an industry carried on by or under the authority of a department of the appropriate Government or by or on behalf of a local authority, as the case may be. The definition of "employer" has been made exclusive and it is probably for the benefit of the employees. Even if the departmental head initiates an action, complaint can be taken against such action as the action of the employer. To that extent the agent or the person for the time being in authority, is clothed with the personality of the employer, so that he may be answerable. An employer under clause (g) of Section 2 of the Act means in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf or where no such authority is prescribed, the head of the Department.

14. Clause (g) of rule 2 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as the Rules) prescribes the authority who shall be an employer within the meaning of clause (g) of section 2 of the Act. For the sake of convenience provisions of clause (g) of rule 2 of the Rules are extracted thus:

"(g) with reference to clause (g) of section 2, it is hereby prescribed that —

(i) in relation to an industry, not being an industry referred to in sub-clause (ii), carried on by or under the authority. Department of the Central or a State Government, the, officer in charge of the Industrial establishment shall be 'employer' in respect of that establishment, and

(ii) in relation to an industry concerning railways, carried on by or under the authority of a Department of the Central Government:—

(a) in the case of establishment of a Zonal Railway, the General Manager of that Railway shall be the "employer" in respect of regular railway servants other than casual labour;

(b) in the case of an establishment independent of a Zonal Railway, the officer-in-charge of the establishment shall be the 'employer' in respect of regular railway servants other than casual labour; and

(c) the District Officer-in -charge or the Divisional Personnel Officer or the Personnel Officer shall be the 'employer' in respect of casual labour employed on Zonal Railway or any other railway establishment independent of a Zonal Railway".

15. As detailed above Officer-in-charge of the industrial establishment carried on by or under the authority of the Corporation shall be an employer in respect of that establishment. It is not a matter of dispute that Senior

General Manager, Jawalapur is the Officer Incharge of that establishment. Therefore, Sr. General Manager/General Manager, Jawalapur Depot of the Corporation is an employer and he has been rightly arrayed in the claim statement as such. The issues are, therefore, answered against the management.

Issue No. 3.

16. Shri Dheer Singh swears in his affidavit that he, alongwith 120 workers, was a member of Food Handling Workers Union from 1995 to 2000. Thereafter he became member of FCI (Handling) Workers Union in the year 2002. He along with other workers worked at Jawalapur Depot of the Corporation. They were doing work of loading, unloading, stacking, de-stacking, re-stacking weighment, standardization, filling of gunny bags, cleaning, sweeping, re-packing etc. of foodgrains from 1994 under contractorship. Contract labour system continued upto 31st of December, 1995. A co-operative society used to work as contractor but it failed to continue the contract work. Thereafter all the workers engaged by that society continued to work under direct supervision of the Corporation from 1-1-96 to 3-9-96. Management got the work done directly from the workers. Payments were directly made by the management to all the workers. From 19-3-97 to 19-8-97 he worked as a labour-mate under the direct supervision of the Corporation. Payments were made by Depot Incharge directly to the workers. On 20-6-98 a bipartite agreement was entered into between the management of the corporation and Food Corporation of India Workers Union. He projects that he never worked as a contractor and contract agreement filed by the management was for the purposes of wage rates to be given to the workers. He put his signatures on that contract agreement, on assurances given by the management that it will be used for wage rates and not as a transport handling contract. He was under an obligation to get labour license, income tax clearance certificate and deposit security money with the management, in pursuance of the terms of the said contract. He never fulfilled those obligations. His status as a mate is evident from letter dated 5-9-2003 addressed to him by the A.L.C. He had appended his signatures on wage sheets from 19-3-97 to 31-3-97 as a worker. During the course of his cross examination he concedes that Ram Avtar made a complaint against him before the Labour Office and compromise Ex. WW I/MX was arrived at. He admits that on Ex. WW I/MXY his photo and signatures appear at every page. He further admits that he started working as 18-3-77. (Document EX.WW I/MXY was accepted on 18-3-1997. It seems that date as 18-3-77 is a typographical mistake). He further admits that he used to work with Mahipal Contractor.

17. Similar facts were detailed by Vinod Kumar, Roop Chard, Sesh Raj and Des Raj in their affidavits. They project

that Dheer Singh was working as a labour mate and not as a contractor. He was invited as a labour mate by the management of the Corporation, for discussion in the office of Senior Regional Manager on 17-5-2004. Dheer Singh had put his signatures on the contract agreement on the assurances given by the management to the effect that the said agreement relates for the wage rates of the workers and not as a handling and transport contract. He has not complied with the instructions given by the management to obtain labour license income tax clearance certificate and deposit security money. He signed the wage sheets as a labour mate.

18. Shri K.S. Barwal swears in his affidavit that Dheer Singh, Bishan Pal were appointed as contractor for loading, unloading and transportation of food grains and allied materials, vide letter dated 9-12-96 for Jwalapur Depot of the Corporation. They signed the contract on each and every page, which was accepted by the Corporation. They were appointed as ad-hoc handling transport contractor at Jwalapur Depot. A communication dated 21-3-97 was sent to them. Dheer Singh and Bishan Pal gave acceptance to that contract vide letter dated 18-3-97. Bills for the period from 19-3-97 to 31-3-97 for a sum of Rs. 47242.47 p for loading charges, bill for a sum of Rs. 29439.25p for transportation charges, bill for a sum of Rs. 15741.83 for the period 1-4-97 to 18-4-97 for loading purposes and for a sum of Rs. 15741.83 for the period from 1-4-97 to 18-4-97 were claimed by Dheer Singh, Bishan Pal as contractors. Ad-hoc contract awarded to them expired on 17-9-97. Services of the claimants were hired on contract basis. After expiry of the contract of Dheer Singh and Bishan Pal and Mahipal Giri, M/s. Rana Transport Corporation was appointed as regular handling and transport contractor for a period of two years. At that juncture, labours of ex-contractor created unrest and insisted that they should be engaged by newly appointed contractor. When newly appointed contractor was not willing to engage them, they paralysed the work and delivery to the State Government were badly affected. To resolve that problem. Meeting was held on 20-6-98, wherein it was agreed that the workers, who were working with earlier contractor, may be employed with the existing contractor and list of the workers shall be provided by the Union. Ex contractor Dheer Singh was contacted on 13-5-98 to obtain list of 80 workers so that work may be provided to them with M/s. Rana Transport Company. Dheer Singh verbally refused to give anything in writing. Therefore, that settlement could not be materialized. The Corporation never entered into an agreement for direct engagement of labours. It has been pleaded that Jwalapur Depot had two godown and the Corporation is not the exclusive user of those godowns. During the course of his cross examination he presents that Jwalapur Depot is lying closed since 1998. 50 workers can cater need of Jwalapur Depot. The Depot is lying closed on account of labour unrest. Contract of Dheer Singh

commenced on 18-3-97 and it lasted for six months. He had given an undertaking to furnish income tax clearance and relevant documents.

19. When facts projected by rival parties were appreciated. it came to light that Dheer Singh, Vinod Kumar. Roop Chand. Sesh Raj and Des Raj concede that they, alongwith others, were doing job of loading, unloading, stacking, restacking, destacking, weighment, standardization, fetching of gunny bags, cleaning, sweeping and retaking etc. of food grains for the Corporation from 1994 under a contractor. According to them contract labour system continued upto 31-12-95. At that time a cooperative society was working as contractor which society failed to continue with the contract work. They project that thereafter workers were engaged directly by the Corporation w.e.f. 1-1-96 to 30-9-96. However, these facts stand dispelled when document Ex. WW1/MX is appreciated. This document makes it clear that the said cooperative society, referred by the aforesaid witnesses, was doing handling and transport contract work from last many years. Labour supplied by Dheer Singh and Kale used to carry out contract work of the said society. 18-19 employees were working permanently with the said society. The society employed more labours when food grains were sent to Jwalapur Depot in May, 96. A dispute between additional labour force supplied by Dheer Singh and Kale arose. Shri Ram Avtar arranged some other labours and submitted list of them for issuance of entry passes. When Dheer Singh and Kale came to know about that situation, they approached Ram Avtar and settled their grievances. EX.MW1/MX further highlights that labour of Dheer Singh and Kale used to perform job for the said society, under contractor ship of Shri Ram Avtar. The said dispute was settled on 24-12-96 and Ex.WW1/MX was written by Ram Avtar to Distt Manager of the Corporation, having his office at Sri Nagar, Garwal. Consequently out of contents of Ex. WW1/MX, which is not disputed on behalf of the workman, it stand established that till 24-12-96 the society was working as a handling and transport contractor and labours were provided to the society by Dheer Singh and Kale. Shri Dheer Singh was working as a sub contractor, who used to supply labour to the said society. Claim put forward by the workers to the effect that they worked directly under the Corporation from 1-1-96 to 3-9-96 stands brushed aside. They worked under the contractor-ship of society, which was working under the banner of Ram Avtar till December, 96. Shri Dheer Singh worked as a sub contractor and supplied labour to the said society.

20. It was further projected by the claimants that 19-3-97 to 19-8-98 they worked directly under the Corporation, during which period Shri Dheer Singh was working as a labour mate. When Dheer Singh faced ordeal of cross examination, contract agreement was put to him and he admitted that it bears his signatures on every page. He further admitted that his photo is affixed on the

application moved by him for obtaining contract. When Shri Barwal entered the witness box, the said document was exhibited as MW1/4 and when Shri Roop Chand entered the witness box, he was confronted with that contract agreement, which was inadvertently exhibited as Ex.WW3/M I at that juncture. Shri Roop Chand admitted that photograph of Bishan Pal is clearly visible over that document. Sesh Raj admits that signatures of Dheer Singh and Bishan Pal appear on Ex. WW3/M I. Desh Raj admits that photograph of Dheer Singh and Bishan Pal appear on Ex.WW3/M1. Desh Raj admits that photograph of Dheer Singh and Bishan Pal appear on Ex.WW3/M1. Therefore out of the admissions made by these witnesses it emerge over the record that photograph and signature of Dheer Singh and Bishan Pal appear on Ex.WW3/M1 (marked as Ex. WW1/MXY during the testimony of Dheer Singh) Ex. WW3/M1 is a tender application submitted by Shri Dheer Singh and Bishan Pal for obtaining handling and transport contract at Jwalapur Depot of the management. Dheer Singh admits that he started working as a contractor on 18-3-97 and gave his joining report as Ex. WW1/MXZ in that regard. Therefore, from the depositions made by these witnesses, coupled with the documents proved, it came over the record that Dheer Singh and Bishan Pal obtained handling and transport contract at Jwalapur Depot of the Corporation and started working as contractor since 19-3-97. Shri Roop Chand admits that his signatures appear at S.No.63 of Ex.WW3/M2. which document was exhibited as Ex.MW1/6, in the testimony of Shri Barwal due to inadvertence. Document Ex. WW3/M2 (proved as Ex.MW1/6 by Barwal) has not been disputed by and on behalf of the workmen. Out of this document it emerged that wages of the contract labours were paid by Dheer Singh and Bishan Pal for the period from 19-3-97 to 31-3-97. Therefore, this document goes to show that Dheer Singh started working as a handling and transport contractor w.e.f. 19-3-97. His contention that he worked as a labour mate is unfounded.

21. Shri Barwal swears in his affidavit that Bill No.3 dated 18-4-97, for a sum of Rs.157418.83p, was submitted by Dheer Singh and Bishan Pal, the contractor. When that bill was perused it came to light that it was submitted on behalf of Dheer Singh and Bishan Pal. When the claimants tried to purify testimony of Barwal by an ordeal of cross examination, they opted not to dispute that bill. Therefore, it emerge over the record that Dheer Singh and Bishan Pal submitted bill from 1-4 -97 to 18-4-97 in the capacity of a handling and transport contractor. Consequently these documents highlight that Dheer Singh and Bishan Pal worked as a handling and transport contractor with the management from 19-3-97 to 18-4-97. Shri Barwal went on to depose that contract of Shri Dheer Singh, Bishan Pal lasted for six months. His contract was not terminated in between, which testimony also remained unassailed. Therefore it is evident that the management has been able to establish that the contract of Shri Dheer Singh and Bishan

Pal remained effective till 19-9-97. Shri Dheer Singh was working as a contractor while his associates, who deposed facts in the present controversy, were working as labours with him. It cannot be said that they directly worked under the management for that period.

22. A claim has been put forward by the claimants that bipartite agreement was entered into between the Corporation and FCI Workers Union on 20-6-98. When said agreement is perused, it came to light that it was agreed between the Corporation and FCI Workers Union that 80 workers shall be employed at Jwalapur Depot. out of the list of 160 workers who had worked there under the contractor. The list and bio-data of those 80 workers was to be provided by the union out of entire 160 workers, who were their members. If the work load was to increase in future, additional workers were to be provided by the union on the request of the management. out of the list of 160 workers as mentioned above. This settlement speaks that the management was to engage 80 workers for the time-being, out of the list of 160 workers of the contractor. Whether the said agreement was ever acted upon? Not even a word has been spoken by Dheer Singh, Vinod Kumar, Roop Chand, Sesh Raj and Des Raj to the effect that the said agreement was acted upon. On this issue Shri Barwal testified that it was agreed that 80 workers were to be employed by the new contractor, namely, M/s. Rana Transport Corporation and list of those workers was to be provided by the union. New Contractor refused to engage workers of the ex-contractor. Dheer Singh refused to provide list of the workers and the said settlement could not be acted upon. This proposition. of fact was not questioned on behalf of the claimants, when Shri Barwal was grilled by way of cross examination. Testimony of Shri Barwal highlights that the said agreement was never acted upon. It cannot be said that the claimants ever worked directly under the management. It stands established that the claimants were engaged by the contractor. to whom handling and transport contract was awarded by the management. Issue is, therefore, answered in favour of the management and against the claimants.

Issue Nos. 4, 5 and 6

23. One of the question, referred by the appropriate Government is as to whether Food Corporation of India (Handling) Workers Union have locus standi to raise the dispute on behalf of the workmen. On that issue Dheer Singh had testified that he alongwith 129 others was member of the FCI Workers Union from 1995 to 2000. In the year 2003 he became members of the FCI (Handling) Workers Union. Same facts are testified by Shri Vinod Kumar, Roop Chand, Sesh Raj and Des Raj. Not even an iota of fact was deposed on that issue by Shri Barwal. Therefore it is evident that till 2000 the claimants, alongwith others were members of the FCI Workers Union. In the year 2003 they became members of the FCI (Handling) Workers Union.

24. Question for consideration comes as to whether there was any dispute existing or apprehended, which could be referred to this Tribunal for adjudication. For an answer to this proposition one has to see the definition of "industrial dispute". Clause (k) of Section 2 of the Act defines industrial disputes, which definition is extracted thus:

"Industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person;"

25. The definition of "Industrial dispute, referred above can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute viz. (a) employers and employers, (b) employer and workmen, or (c) workmen and workmen. (3) subject matter of the dispute, which should be connected with (i) employment or non-employment. or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

26. The decision of industrial dispute is worded in very wide terms and unless they are narrowed by the meaning given to word "workman", which would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not. it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of Section 2 of the Act.

27. Clause(s) of Section 2 of the Act defines the workman as follows:

(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment. be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act. 1950 (45 of 1950), or the Army Act 1950 (46 of 1950) or the Navy Act. 1957 (62 of 1957), or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is, employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

28. The first part of the definition gives the statutory meaning of the workman. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition. person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purposes of any proceedings under the Act in relation to such industrial dispute, have been included, in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excludes the categories of persons specified in clauses (i) to (iv) of this sub-section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition. Only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

29. FCI (Handling) Workers Union was joined by 130 members, who were working with the contractors, to whom handling and transport contract was awarded by

the management from time to time. There were total 160 members, out of whom 130 members joined FCI (Handling) Workers Union. Consequently it is evident that majority of the contract workers joined FCI (Handling) Workers Union. The majority of the members decided to raise the dispute before the Conciliation Officer in that regard. Hence it is evident that FCI (Handling) Workers Union had a locus standi to raise the dispute before the Conciliation Officer. No matter the said dispute is found to be tenable or not. Therefore, proposition put forward by the appropriate Government, in that regard is answered accordingly.

30. Claimants never became direct employee of Jwalapur Depot of the Corporation. They worked under the contractor(s) to whom work of handling and transport contract was awarded by the management from time to time. When M/s. Rana Transport Corporation was awarded handling and transport contract, the claimants alongwith the others created unrest and did not allow the new contractor to carry out his contractual obligation. Jwalapur Depot of the Corporation could not function at all and work came to stand still. On account of labour unrest work of Jwalapur Depot stood closed. It was not closer of the depot by the management. Depot is lying closed on account of labour unrest. Under these circumstances the claimants could not get any job, since new contractor was not ready to engage them. It is not a case of termination of their services by the Corporation under the guise of closer of the depot. In such a situation legality and justifiability of closure of Jwalapur Depot nowhere comes in issue. There is no occasion for this Tribunal to adjudicate legality and justifiability of closer of Jwalapur Depot by the Corporation. Claim put forward by the claimants is devoid of merits. They are not entitled to any relief. An award is accordingly passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

DATED: 11-3-2010

नई दिल्ली, 26 अप्रैल, 2010

का. आ. 1292.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओ.एन.जी.सी. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, मुम्बई के पंचाट (संदर्भ संख्या सी जी आई टी. 2/18/2005- शिकायत स. सी. जी. आई टी. 2/5 एवं 2006 को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-2009 को प्राप्त हुआ था।

[सं. एल-15025/2/2008-आई आर(एम)]

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 26th April, 2010

S. O. 1292.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Complaint No. CGIT-2/5 of 2006 in reference. No. CGIT-2/18 of 2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ONGC Ltd. and their workmen, which was received by the Central Government on 22-12-2009.

[No. L-15025/2/2008-IR(M)]

KAMAL BAKHRU, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

PRESENT

A.A. LAD, Presiding Officer

COMPLAINT No. CGIT-2/5 of 2006

in

REFERENCE No. CGIT-2/18 of 2005

PARTIES:

General Employees Association

Having its office at Tel Rasayan Bhavan,

Tilak Road, Dadar,

Mumbai-400014

...Complainant

Versus

The Chairman and Managing Director,

M/s. Oil and Natural Gas Corporation Ltd.,

Vasundhara Bhavan,

Bandra (E), Mumbai-400 051

...Opponent

APPEARANCES:

For the Complainant : Mr. J. H. Sawant, Advocate

For the Opponents : Mr. G. D. Talreja, Representative

Mumbai, Dated the 16th November, 2009.

AWARD

1. Complainant has filed this complaint under Section 33-A of Industrial Disputes Act stating that Ref.CGIT-2/18 of 2005 is pending for adjudication. It is stated that the Opponent ONGC has violated Section 33 of the Industrial Disputes Act in that it has altered the conditions of services of three workmen involved in the reference. Said is replied by the Opponent by filing Written Statement Ex-7.

2. Meanwhile Complainant, vide Ex-8 filed application for withdrawing complaint. Hence the order:

ORDER

In view of Ex-8, Complainant is disposed of for want of prosecution.

A. A. LAD, Presiding Officer

Date: 16-11-2009

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Complaint No. CGIT-2/5 of 2006

General Employees Association ... Complainant

Vs.

Oil and Natural Gas Corporation ... Respondents

Application for withdrawal of the complaint

May it please Your Honour

The complainant prays that this Hon'ble Tribunal may pleased be allowed to withdraw the above complaint and oblige.

Jaiprakash Sawant

Advocates for complainant

Mumbai

Date: (16-11-2009)

नई दिल्ली, 26 अप्रैल, 2010

का. आ. 1293.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 56/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2010 को प्राप्त हुआ था।

[सं. एल-12025/3/2004-आई आर(बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th April, 2010

S. O. 1293.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 56/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 26-4-2010.

[No. L-12025/3/2004-IR(B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD

Present: Shri VED PRAKASH GAUR, Presiding Officer

Dated the 19th day of March, 2010

INDUSTRIAL DISPUTE L.C. No. 56/2004

BETWEEN:

Sri V. Pullaiah,
S/o Late Balaiah,
Mundlapadu (Vill. PO),
Giddalur (Mandal), Prakasam (Dt).

....Petitioner

AND

1. The Deputy General Manager,
State Bank of India, (Personnel & HRD Section),
Zonal Office, Tirupathi, Chittoor District

2. The Assistant General Manager,
Disciplinary Authority, Region-I,
State Bank of India, Zonal Office,
Tirupathi, Chittoor District

3. The Chief Manager and Enquiry Officer
State Bank of India, Kandukur,
Prakasam District.

.....Respondents

APPEARANCES:

For the Petitioner : M/s. I. V. Radha Krishna Murthy,
G. Ravi Shankar & K. Srinivasulu,
Advocates

For the Respondent : M/s. B. G. Ravindra Reddy & B. V.
Chandra Sekhar, Advocates

AWARD

Sri V. Pullaiah has filed this petition under Sec. 2 A (2) of the I D Act, 1947 in light of pronouncement made by the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The case of the Petitioner is that he joined the services of the Respondent bank as Armed Guard on 23-6-1987 at its Zonal Office, Tirupathi. Later on he was promoted as clerk-cum-cashier in the year 1992 and was posted to Kommarolu Branch, Prakasam district and thereafter he was transferred to Giddalur Branch in the month of October, 1997. Since he was discharging his duties to the best satisfaction of his superiors and public with unblemished record of the service, the Petitioner was suspended on 12-6-2000 vide memo dated 12-6-2001 by the R2 alleging that serious irregularities in SB Account of Giddalur branch was committed by the Petitioner with respect to SB Account No. P571 11897 of Smt D. Pameela. Subsequently, the Respondent No. 2, served a memo of charge sheet on the Petitioner on 21-2-2002 to which the Petitioner submitted his explanation. It was alleged by the Respondent that on 21-4-2001 a sum of Rs. 4000, on 28-4-2001 a sum of Rs. 3000 on 7-5-2001 a sum of Rs. 3000 and on 16-5-2001 a sum of Rs. 2000 were withdrawn from the account of Smt D. Pameela, account holder through payee slip on which the Petitioner has written, 'the account holder known to me' under his signature. But, those withdrawals were found to be forged, because Smt. D. Pameela has denied those withdrawals and the Petitioner

gave Rs. 7000 on 25-5-2001 and Rs. 5000 on 1-6-2001 to Pameela to cover the fraud committed by him. The act of the Petitioner was against the interests of the bank and constitute gross misconduct in terms of paragraph 521(4)(i) of the Sastry Award. Explanation was given by the Petitioner not satisfied with the response of the Petitioner the Enquiry Officer was appointed to conduct an enquiry. The Enquiry Officer submitted his report holding that the charges were proved. The Petitioner submitted his case before the disciplinary authority by making written arguments and termination of the service of the Petitioner by order dated 24-12-2003 which was communicated to the Petitioner in the month of January, 2004. The Petitioner has challenged the order of the termination on several grounds. He has also challenged the validity and legality of domestic enquiry. The Petitioner requested for setting aside the termination order for his reinstatement into services.

3. The Respondent has filed counter statement stating therein that the Petitioner has withdrawn Rs.12,000 in four different dates mentioned in the claim petition from the savings Bank Account of Smt. D. Pameela. That respective pass books were not been produced at the time of withdrawal. The pay in slip bearing the signature of D. Pameela on the verification was not matched with the signature of the account holder though the Petitioner endorsed 'known to him' under her signature. Thus, the Petitioner has deviated the bank and has irreparable loss to the bank by tarnishing the bank's image. The Petitioner defrauded the bank for Rs.12000 and he gave Rs.7000 on 25-5-2001 and Rs.5000 on 1-6-2001 to Smt. D. Pameela to cover up the fraud committed by him. A charge sheet was issued, enquiry was held. Petitioner participated in the enquiry. Enquiry Officer has submitted his report on the basis of the records. The Disciplinary Authority gave personal hearing to the Petitioner. The Petitioner submitted written statement, thus, final order was passed on 25-3-2003 confirming the removal of Petitioner from the services, no violation was committed regarding principles of natural justice. Petitioner has committed gross misconduct. Punishment of removal is not disproportionate to the misconduct committed by the Petitioner.

4. Petitioner remained absent after 17-10-2006 though he was given several opportunities. They did not challenge the proceedings of departmental enquiry and thus, on 7-7-2009 domestic enquiry has been held as legal and valid. Case was posted for arguments. Thereafter, Petitioner did not turn up. Thus, this tribunal has no other option but to pass the award in the absence of the Petitioner.

5. I have perused the pleadings of the parties and evidence filed by the Respondent through the proceeding book of the departmental proceeding. Since the Petitioner

has not been able to prove any violation of the principles of natural justice or the evidence collected by the Enquiry Officer proving the charges levelled against the Petitioner regarding fraudulent withdrawal of a total sum of Rs.12,000 as such, this tribunal is of the opinion that the punishment imposed upon the Petitioner by the management is neither unjustifiable nor illegal nor disproportionate to the charges framed against the Petitioner. Therefore, the Petitioner is not entitled for any relief and the petition deserves to be dismissed, hence, this award.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 19th day of March, 2010.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witness examiner for the Petitioner NIL

Witness examined for the Respondent NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 26 अप्रैल, 2010

का.आ. 1294.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 206/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2010 को प्राप्त हुआ था।

[सं. एल-12025/2/2004-आईआर (बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th April, 2010

S.O. 1294.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 206/2004) of the Central Government Industrial Tribunal -cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, which was received by the Central Government on 26-4-2010.

[No. L-12025/2/2004-IR (B-1)]

SURENDRA SINGH, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
HYDERABAD****Present : Shri Ved Prakash Gaur, Presiding Officer**

Dated the 15th day of February, 2009

Industrial Dispute L. C. No. 206/2004**Between :**

Smt. K. Kamala Bai;
W/o Praveen Kumar,
R/o C/o Sarojini Devi,
12-8-276/2, Alugadda Bavi,
Near Mettuguda, Secunderabad.Petitioner

And

The Chief General Manager (Personal),
State Bank of India,
Local Head Office, Bank Street,
Koti, Hyderabad.Respondent

APPEARANCES

For the Petitioner : M/s. S. Prasada Rao, C.V.
Vysampayan & C. Bala
Subramanyam, Advocates

For the Respondent : M/s. B. G. Ravindra Reddy &
B. V. Chandra Sekhar,
Advocates

AWARD

This petition filed U/s 2A (2) of the Industrial Disputes Act, 1947 has been filed by Smt. K. Kamala Bai an ex-employee of State Bank of India in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in 1997 (3) LLJ Supplement, page 1141 in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The Petitioner in her claim petition stated that she worked as messenger from January 1990 to 31-3-1997 in Respondent's Bank in Secunderabad. She has crossed the age of recruitment and now she can not seek alternative employment. She made several representations through her union NCRCU through their representative Sri Y. Tarakanth but no response was given by the Respondent. This Petitioner was constrained to approach the Hon'ble High Court of A.P., Hyderabad by way of writ petition which was decided by his Lordship Justice G.A. Somasekharam who ordered for consideration of employment in writ petition No. 4194/97 along with 9205/97, 5087/97 against which writ appeal was filed by Respondent W.A. No. 86/98 which was allowed by the Hon'ble High Court against which the Petitioner moved a Special Leave Petition before the Hon'ble Supreme Court of India which was dismissed confirming the order of Division Bench.

3. The Petitioner has further contended that the management has not complied with the order of the Single Judge. They prepared a panel of the casual workers of the branch. The name of Petitioner find place the list of the panel prepared by the Respondent management. The person junior to the Petitioner working in other branches were absorbed by the Respondent. The Petitioner was not absorbed. In view of the direction of the Single Judge of the Hon'ble High Court of A.P., Hyderabad, the panel of names remained valid upto December, 1991, which was kept alive upto 31-3-97. The Petitioner was under an impression that after empanelment of her name in the selected list she will be absorbed in the bank's services. A settlement was arrived at between the bank employees union and the management, firstly on 17-7-89, again on 16-10-88 and 27-10-88 followed by agreement dated 26-4-94. The earlier settlements were modified with an intention to afford an opportunity to empanelled candidates which was not followed by the Respondents. Ultimately the Petitioner's services were discontinued on 31-3-97. No notice was given to the Petitioner, no pay in lieu of the notice was given to the Petitioner. Hence, the action of management in discharging the Petitioner's services without any written order is illegal, irregular and arbitrary and unjust.

4. The Respondent management has filed counter and stated that All India Bank Staff Federation which represented majority of the employees of the State Bank of India comprising of the workman force as its members espoused cause of temporary employees who had put in less than 240 days of temporary service in 12 calendar months and who were ineligible for any kind of protection under Industrial Disputes Act, 1947 requested the bank to give a chance for being considered for absorption and permanent appointment of such temporary employees, discussions were held and issues were discussed in all aspects and it was felt that it would be just and fair and reasonable in the case of the concerned temporary employee that a settlement should be reached. Out of several factors covered under the settlement which have bearing on the issues under consideration. On 17-11-87 an agreement was signed between the Federation of Bank Employees and bank management under sec.2 (p) read with Sec. 18 (1) of the Industrial Disputes Act, 1947 and Rule 58 of the Industrial Disputes Act, 1947. In this settlement it was agreed that temporary employees be categorized in three categories -A, B & C.

Category (A) : Those who have completed 240 days of temporary service in 12 calendar months or less after 1-7-1975.

Category (B) : Those who have completed 270 days of aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.

Category (C) : Those who have completed a minimum of 30 days of aggregate temporary service in any calendar

year after 1-7-1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.

It was settled and agreed that the temporary employees categorised above would be given a chance for being considered for permanent appointment in the bank's service against the vacancies arose at or likely to rise during the period 1987 to 1991. On 16-7-1988 further agreement was arrived at wherein it was agreed to substitute the period for consideration of the vacancies as 1987 to 1992 in place of 1987 to 1991. On 27-10-88 further agreement was arrived at between Federation of Employees Union and management as third settlement thereby all the persons who were engaged on casual basis to work in leave/casual vacancies of messenger, Farrashes, Cash Coolies, Water Boys, Sweepers etc., for any of the periods mentioned in categories A,B,C was to be given a chance for being considered for permanent absorption, in the vacancies which were likely to arise from 1988 to 1992. Accordingly casual/daily wagger also considered for permanent absorption. The Government of India vide its letter dated 16-8-90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees and guidelines laid down in Approach Paper. Although the Government guidelines envisages for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements even in respect of those employees who had put in less than 90 days services. As such that settlement was more beneficial to temporary employees. The Approach Paper also specified that the bank would provide one time opportunity to all the temporary employees and for that purpose, the employees who worked in bank on or after 1-1-1982 would also be considered for employment in terms of the scheme. The Respondent bank has gone further and considered even those persons who started working after 1975, subject to availability of the vacancies. Thus, while the terms of agreements and guidelines given in the Approach paper another settlement was arrived at between the employees union and Respondent bank on 9-1-1991 as 4th settlement. Taking into consideration, the settlement dated 17-1-1987, 16-7-1988, 21-10-1988 and agreeing inter-alia to consider the case of the temporary employees and casual and daily wage workers separately in the vacancies likely to arise in the year 1994, 1995-96 respectively and it was agreed that the year 1992 be substituted with the year 1994. In other words separate panels were to be prepared for temporary and casual daily wage employees for filling up the vacancies between 1995 and 1996 also following the procedure laid down for preparation of panels of qualified candidates. Panels were prepared Zone-wise separately for messenger and non-messenger category in the descending order of temporary service put in by the candidates during stipulated period i.e., 1-7-1975 to 31-7-1988. It was further submitted by the Respondent

that Federation of the employees union approached Regional Labour Commissioner (C), Hyderabad for implementation of the bipartite settlement in respect of the absorption of the temporary employees. The Regional Labour Commissioner (C), Hyderabad conducted conciliation proceedings and agreement was arrived at between the Federation of the management bank, it was agreed between Federation and management that panel of temporary employees and daily wage casual labour would be kept alive upto 31st March, 1997 and vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. In pursuance of the conciliation proceedings and settlements arrived at between the Federation and management bank on 30th July, 1996 U/s 2(p) read with Section 18 (1) of the Industrial Disputes (Central) Rules, 1957 as 5th settlement dated 30-7-1996 where under earlier four settlements dated 17-11-87, 16-7-88, 27-10-88 and 9-1-91 were referred. It was agreed between the Federation and the management that both the panels of temporary employees and daily wagers casual employees will be kept alive upto March, 1997 for filling the vacancies as on 31-12-1994. It was further agreed that within the frame work of the above settlements, the modalities about the drawing names of the employees of the panel or the daily wagers and casual employees would be decided administratively on circle to circle basis depending on the local requirements in consultation with the Federation's affiliated by the circle management and further agreed that all messengerial vacancies/posts in the subordinate cadre including part time attendants specifically provided as leave reserve will be filled by the end of 31-3-1997. On 27-2-1997 a memorandum of understanding was also signed between the Federation's affiliate and the Bank management, the fact that the exercise of identifying the messengerial vacancies as on 31-12-1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to the circle of the management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was further agreed that in terms of the settlement on 30-7-1996 both the panels of temporary employees and daily casual labour employees would lapse on 31-3-1997. It has been submitted by the Respondent that vacancies agreed upon were filled with the eligible candidates in the panels. Petitioner has not put in more number of days than those who have been absorbed. The Petitioner has not worked continuously for the years alleged by her. The Petitioner who has put in less than 240 days in continuous 12 months period during the period from 1-1-1975 to 31-7-1988 had no right to seek direction for consideration of her candidature for absorption under any rule /law except under the settlements entered into between the Federation and Bank management.

5. The case of the Petitioner has been considered under settlement dated 17-1-1987, 16-7-1988, 27-10-1988, 9-1-1991 and 30-7-1996. Having considered the case of the Petitioner under the terms and provisions of the settlement which is binding upon the Petitioner also the management has not violated any provisions in terms of the settlement. The allegation of the Petitioner that juniors to her had been absorbed is incorrect. It is ill founded and misconceived. The Petitioner as well as similarly placed other employees do not have any entitlement to claim any independent right except basing their claims under the settlements. The Petitioner and similarly placed other employees do not fall under the category of protected employees as contemplated under the Industrial Disputes Act, 1947. The settlements being expressly time bound and the panels prepared in pursuance thereof having lapsed and ceased to exist at the end of the designated period viz., 31-3-1997, thus, the remaining candidates on the panels including the Petitioner of this case has no right or claim of any nature she is not entitled for any relief. It was never agreed nor was it the intendment under the settlement to keep the panels alive till all the empanelled candidates are absorbed. Such a course was neither envisaged nor feasible. If the Petitioner did not intend to accept the settlement she should have raised the objection before appearing for interview and consequent empanelment. Having claimed the benefits accrued under the settlements and the consequent empanelment etc., the applicant is debarred and estopped from questioning the validity of the settlements. Since the agreement entered between the parties stipulated that vacancies arising up to the year 1996, December, will be filled from panel of 1989 on the seniority basis. Said panel stood lapsed and remaining candidates had no claim, because, the vacancies have been filled up on the basis of the seniority. The present petition is based on the settlements alone. It is not based on any independent right to seek regularization much less under any provision of the Industrial Disputes Act, 1947. The panel was made expressly time bound for implementation and absorption. The last extension has been expired on 31-3-1997. The period was an integral part of the last settlement and can not be modified under any proceedings under the law. The Petitioner has got no claim. The settlement which is binding on the Petitioner is fully implemented, there is no violation of settlement or the provision under the Industrial Disputes Act, 1947 and the Petition deserves to be dismissed.

6. Petitioner has filed a service certificate Ex. W1 which shows that Petitioner was initially appointed on 17-1-1990 she worked for a total period of 88 days during 17-1-1990 to 8-5-1990 and she got Rs. 12 to Rs. 18 per day. She has filed another certificate Ex. W2 to show that from April, 1994 to October, 1994 she has worked for 177 days, Ex. W3 is letter of her interview for seeking permanent appointment. Ex. W4 community certificate, showing that Petitioner is a member of SC community. Apart from those

documentary evidence, Petitioner was examined herself and also appeared for cross examination.

7. The respondent has also filed document relating to copies of settlements dated 17-11-1987 as Ex.M1, settlement dated 16-7-88 as Ex.2, settlement dated 27-10-1988 as Ex.3, settlement dated 9-1-1991 as Ex. M4, copy of conciliation proceedings dated 9-6-95 as Ex.5, copy of settlement dated 30-7-1996 - Ex. M6, Copy of memorandum of understanding dated 27-2-1997- Ex. M7, Copy of statements giving the particulars of 1989 messenger panel -Ex. M8, Copy of settlement of non-messenger panel - Ex. M9, copy of statement of 1992 panel-Ex. M10, Copy of judgment of Hon'ble High Court of A.P., Hyderabad in W. A.No. 86/98 dated 1-5-98-Ex. M11, copy of judgement of Hon'ble Supreme Court in SLP No. 11866- 11888 of 1998 dated 10-8-1998- Ex.M12. Apart from documentary evidence Respondent has produced affidavit of Sri Ch. Vijay Sekhar, Chief Manager (PER & HRD), State Bank of India Zonal Office, Hyderabad and has presented him for cross examination.

8. I have heard Learned Counsel for the Petitioner and Respondent management and also gone through the Petitioner's claim statement, Respondent's counter statement and documentary as well as oral evidence of the parties. It has been argued by the Learned Counsel for the Petitioner that her petition is based on the direction of Hon'ble Justice Soma Sekharam who directed for the absorption of the Petitioner as well as others. He has argued that the management has not passed any termination order or dismissal order against the Petitioner, but has stopped the Petitioner from working after 31-3-1997. No notice was given by the Respondent management to the Petitioner before the retrenchment of the Petitioner. As such order of the Respondent management or action of the management in not allowing the Petitioner to work after 31-3-1997 is illegal, unjust, arbitrary and violative of the principles of Industrial Disputes Act, 1947 which has to be rectified by way of an award and the Petitioner be directed to be reinstated in the services of the Respondent bank.

9. The Learned Counsel for the Respondent has argued that the Petitioner was a casual employee for a very limited period. The case of the Petitioner was not covered under the provisions of the Industrial Disputes Act, 1947. However, to protect the interest of such employees who were not covered as workman under Industrial Disputes Act, 1947, the bank management and Federatin of the bank employees entered into an agreement to protect the interest of such casual daily wage or temporary employees for that an agreement was entered into on 17-11-1987 in which the employees were categorically in three categories and list was to be prepared, again 2nd agreement was entered on 16-7-88, third on 27-10-88 extending number of employees number of years and 4th agreement was entered into on 9-1-99, 5th agreement was entered on 30-7-96 and wherein

it was agreed that the panel prepared in 1989 will be exhausted to accommodate the empanelled candidates towards the vacancies which will arise in the year 1994 and 1995 as well. It has further been argued that all the employees were not accommodated, then the matter was raised before Regional Labour Commissioner (C), Hyderabad, by way conciliation, a memorandum of understanding was arrived at during the course of conciliation and an agreement dated 30-7-96 between State Bank of India and Federation of Staff was arrived at wherein it was agreed that while eligible employees will be given a chance against the vacancies to arise upto December, 1994. The cases of employees for consideration of their names for absorption towards the vacancies arising from January, 1995 to 1996 was considered and it was agreed that the panel will be kept alive upto March, 1997 and the employees empanelled in previous panel will be absorbed upto March, 1997, for filling the vacancies which existed or aroused as on 31-12-1994. From 1-4-1997 identification of messengerial vacancies will be done on the basis of new norms to be finalized in the mean time and modalities about drawing the names would be decided administrative circle to circle basis and it was also decided that all messengerial posts will be filled before 31-3-1997 and it was also agreed that all the vacant posts of non-messengerial and messengerial posts upto 31-3-1997 filled before the empanelled list is allowed to lapse. The list of the posts was calculated administratively. A copy of vacant posts has been produced by the Respondent. The Respondent has also filed memorandum of understanding dated 27-2-1997 which provided that in terms of the settlement dated 30-7-1996 finally panels will lapse on 31-3-1997. This memorandum of understanding has been entered into between All India state Bank Staff Federation of Union of Bank Employees and management bank u/s 18(1) of Industrial Disputes Act, 1947 under Sec. 2(p) of the Industrial Disputes Act, 1947 and it is binding on parties. Since the memorandum of understanding shows that the list will lapse on 31-3-1997 and all the vacancies has to be filled in from the panels prepared by the management, there was no necessity of giving any compensation to the Petitioner because she has not been able to prove that she has worked for more than 240 days in the preceding 12 months from the date she was stopped from working. Thus, in the case of the present Petitioner the provision of Industrial Disputes Act, 1947 has not been violated by the respondent management. In her own statement the Petitioner has admitted that she had worked for 265 days through out her entire period of employment. Thus, the case of Petitioner does not fall either within category A, B & C. further the claim of the Petitioner is based on fact that juniors to the Petitioner were absorbed, the Petitioner being senior has not been taken into service. Contention of the Petitioner does not find support from own statement of the Petitioner. Thus, the arguments advanced on behalf of the Petitioner has got no force.

10. Learned Counsel for the Respondent has further argued that the claim of Petitioner is alleged to have been based on the direction of Hon'ble Single Judge of Hon'ble A.P. High Court to which it is admitted case of the parties that the order of Hon'ble Single Judge of Hon'ble High Court of A.P., Hyderabad was challenged by the management by way of Writ Appeal before Division Bench of Hon'ble High Court and the Learned Division Bench of Hon'ble High Court has quashed the order passed by the Single judge. The Petitioner went up to Hon'ble Supreme Court by filing special appeal and said special appeal was already rejected by Hon'ble Supreme Court. Thus, the verdict given by Learned Division Bench of Hon'ble High Court of A.P., Hyderabad has been confirmed and thus, there exists no valid direction of any court of law to absorb the Petitioner in bank's services. Hence, the very basis of this claim petition is unfounded and misconceived.

11. I have considered the above argument of the Learned Counsel for the parties and have gone through the pleadings and evidence of the parties, this tribunal has to consider the following points.

(I) Whether there is valid and enforceable direction of any court of law to absorb the Petitioner in bank's service,

(II) whether the Petitioner's services has been terminated or Petitioner has been discharged or retrenched without following the procedure laid down in the Industrial Disputes Act, 1947,

(III) whether the Petitioner's case is not covered under settlements, agreements entered into Federation of Bank Employees and Bank Management as well as by the Petitioner, and

(IV) whether the Petitioner is entitled for any relief?

Points I, II, III : Petitioner herself has stated that a direction was given by his Lordship Justice G. A. Somasekharam in W. P. No. 4194/97 and a batch of writ petitions, but, in her own claim statement she had further stated that Writ Appeal No. 86/98 was preferred by management a copy of which has been filed by the Respondent management which is available on this record against which a SLP has been filed by the present Petitioner along with other similarly situated employees before the Hon'ble Supreme Court through SLP Nos. 11866—11888/98 which has been dismissed by Hon'ble Supreme Court by their order dated 10-8-98 which is available as material Ex. M12 of this file. This amply proves that the direction contained in W. A. No. 4194/97 has lost its legal value because the order passed in writ petition has been quashed by Division Bench of Hon'ble High Court of A. P., Hyderabad, which was confirmed by Hon'ble Supreme Court. Thus, the Petitioner can not claim any benefit of absorption nor can claim the compliance of the order of the

Hon'ble Single Judge. Thus, there is no legal direction of any court of law for absorption of Petitioner or entitlement of service. Therefore, this tribunal is of definite opinion that the claim based on the direction of the single Judge has no force and it could not be given effect to. Petitioner has further contended that the provision of Industrial Disputes Act, 1947 has been violated by the respondent management because no notice was given to the Petitioner before she was estopped from working nor retrenchment compensation has been given to her. Thus, the principles of Industrial Disputes Act, 1947 has been violated. This contention has been refuted by the Respondent they have stated that the Petitioner's case is not covered by Industrial Disputes Act, 1947. I have considered this point in the light of evidence available on the record. Petitioner examined herself before this tribunal. She has stated that before interview she worked for 88 days and after interview she worked for 77 days. Petitioner has herself filed a xerox copy of the interview call letter dated 8-7-92 by which Petitioner kamala Bai was asked to appear for interview on 20th July, 1992. Meaning thereby that the case of the Petitioner was covered under the agreement dated 9-1-91, meaning thereby that her name if empanelled was to be considered for absorption upto 1994. The Petitioner has categorically stated that before interview she worked for 88 days and after interview i.e., after 1/1992 she has worked for 177 days. But she has not explained in which year she worked for 177 days. Further, there is a service certificate showing that the Petitioner has worked for a total number of 177 days in the year 1994. Whether the Petitioner has worked upto October, 1994 has not been stated nor pleaded, nor disclosed before this court. The own evidence and documents filed by the Petitioner proves that she has worked after the interview in the year 1994 from April to October. Whether she worked for a single day in the year 1995, 1996 or from January, 1997 to 31st March, 1997 has not been proved. The evidence on record proves that Petitioner has worked for 177 days till October, 1994. This means the Petitioner has not worked for a single day after interview and before 31-3-1997, either in the year 1996 or in the year 1995. Thus, the provision of Sec. 25F is at all not applicable in the case of the Petitioner which stipulates that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer.

(II) The workman has to be given one month notice in writing indicating the reason for retrenchment and the period of notice has expired, or the workman has been paid in lieu of last notice, wages for the period of notice.

The above provision clearly stipulates that the workman who alleged to have retrenched should have worked for not less than one year under his employer in the present case there is no evidence that the Petitioner has worked for more than one year or she has worked for more than 240 days for getting the compensation or notice

of disengagement. From own evidence of the Petitioner the cause of action for disengagement arose in the month of October, 1994 itself. She has not been disengaged from the service either on 31-3-1997 nor on any date in years 1995 or 1996. So the case of the Petitioner is not covered under the provisions of the Industrial Disputes Act, 1947 and she can not claim any benefit under the provisions of Sec. 25F of the Industrial Disputes Act, 1947. The Respondent management has not committed any illegality or irregularity in non-compliance of the Industrial Disputes Act, 1947 in the present case. The contention and arguments advanced by the Learned Counsel for the Respondent has got no force as against argument of the Learned Counsel for the Petitioner which is hypothetical and misconceived. Petitioner is not entitled for benefits of Industrial Disputes Act, 1947.

(III) So far as the question whether the management has not complied with the terms of the agreements and settlements arrived at between the Federation of Bank employees and the Bank Management.

The Petitioner has very cryptically stated that several agreements were entered into by her union and the management. She has given the dates of agreements, i.e., 17-11-87, 9-1-88, 16-7-88, 27-10-88 and 30-7-96 and has stated that vacancies has to be filled up to 31-3-1997 but they did not fill up the vacancies from the panels. This contention has not been proved by the Petitioner that the Petitioner's name was not considered or Petitioner's Juniors were absorbed in bank's services from the empanelled list. Petitioner herself has stated that agreement was re-validated for two years and promised to fill up vacancies by 31-3-97. The Respondent's case is also based on the above said settlement but Respondent's case is that by memorandum of understanding and settlement dated 30-7-96 vacancies were to be filled out of the empanelled list according to working days seniority and it was to lapse on 31-3-1997 by filling the entire vacancies which has been done. The Petitioner has not been able to prove that any person junior to her has been absorbed in the bank's service. She herself has admitted during the cross-examination at page-4 that the panel was prepared basing upon the number of days of service put in by temporary employees. She has further stated that some of the temporary employees whose names were not included in the panel were given regular appointment in the bank in order of their seniority in the panel. This proves without any reasonable doubt that person who were absorbed in the bank's services were those persons whose name finds place in the panels prepared by the bank management. It is further proved that those who were absorbed in the bank's services have put in more number of working days than the Petitioner. In the light of this statement and proved facts the arguments advanced on behalf of the Petitioner's counsel that juniors to Petitioner were absorbed in services is baseless and unfounded. The Petitioner has further been questioned

whether any person junior to her has continued in the services. Petitioner has stated that she has no knowledge or documents to show that any person junior to her is continuing in service. This statement proves that the contention of the Petitioner that junior to her is continuing in employment is not correct. The Petitioner in her cross examination and chief itself has stated that her union and management entered into various agreements on 17-11-87, 9-1-88, 16-7-88, 27-10-88 and 30-7-96, further in her cross examination she has stated at page-3 para -3 that she is not aware of the settlements. This shows that the Petitioner is not a truthful witness and no credence can be given to her statement. The Petitioner's claim itself is based on the terms of settlement, she claim the benefit on basis of settlement whereas she says that she has no knowledge about the settlement. It is only because the terms of settlement have stipulated and postulates that the panel will lapse on 31-3-97 by that date entire vacancies have to be filled in from the empanelled list. Since Petitioner's name could not find place in order of seniority till 31-3-1997 as per terms of the agreement, as terms of last settlement of February, 1997 to which the Petitioner is contending having no knowledge. The Petitioner's claim is based on the settlement which was entered into by the Bank Employees Federation and Management, the panel was lapsed on 31-3-1997. From evidence it is proved that Petitioner was not working in any capacity on the date the panel was to lapse. As such, she was not entitled for any notice nor for any retrenchment compensation. She is bounded by the terms and conditions of agreement. It is also proved that Petitioner is not senior to those who were absorbed on the basis of the empanelled list, hence Petitioner is not entitled for any relief.

From the above discussion, this tribunal is of the definite opinion that the Petitioner's case does not come within the purview of protection of Industrial Disputes Act, 1947, case of Petitioner was covered into bipartite settlement which was lastly entered on 27-2-97 by way of which the panel was to be lapsed on 31-3-97. The Petitioner was not in the service either on the date of the settlement dated 27-2-97 nor on the alleged date of the lapse of the panel i.e., on 31-3-1997, she is not entitled for any retrenchment compensation or reinstatement in the services. She was already out the service in October, 1994 itself. She has not challenged the action for the management taken in the year 1994 as such she is not entitled for any relief. Petition is based on Mis-conception and it is unfounded, baseless and had no merit, hence, deserves to be dismissed. Accordingly, the petition is dismissed. Hence, this Award.

Award passed accordingly. Transmit.

Dicted to Smt P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 15th day of February, 2009

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses Examined for the Petitioner :

WW1: Smt K. Kamala Bai

Witnesses Examined for the Respondent :

MW1: Sri C. Vijaya Sekher

Documents Marked for the Petitioner

- Ex.W1 Service certificate dt. 17-7-1992
- Ex.W2 Service certificate dt. 25-5-1995
- Ex.W3 Interview call letter dt. 8-7-92
- Ex.W4 Copy of community certificate

Documents Marked for the Respondent

- Ex.M1 Copy of settlement dt. 17-11-87
- Ex.M2 Copy of settlement dt. 16-7-88
- Ex.M3 Copy of settlement dt. 27-10-88
- Ex.M4 Copy of settlement dt. 9-1-1991
- Ex.M5 Copy of the minutes of conciliation proceedings held before Regional Labour Commissioner (C), Hyderabad (C) dt. 9-6-95
- Ex.M6 Copy of settlement dt. 30-9-96
- Ex.M7 Copy of memorandum of understanding dt. 27-2-97
- Ex.M8 Copy of statements giving the particulars of 1989 messenger panel.
- Ex.M9 Copy of statements giving the particulars of 1989 Non-messenger panel.
- Ex.M10 Copy of statements 1992 panel.
- Ex.M11 Copy of judgment of Hon'ble High Court of A. P., Hyderabad in WA No. 86/98 dt. 1-5-98
- Ex.M12 Copy of judgment of Hon'ble Supreme Court SLP No. 11866-11888/1998 dt. 10-8-98

नई दिल्ली, 26 अप्रैल, 2010

का.आ. 1295.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 237/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2010 को प्राप्त हुआ था।

[सं. एल-41012/131/96-आईआर (बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th April, 2010

S.O. 1295.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 237/97) of the Central Government Industrial Tribunal -cum- Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Central Railway and their workman, which was received by the Central Government on 26-4-2010.

[No. L-41012/131/96-IR (B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R. 237/97

Presiding Officer : Shri Mohd. Shakir Hasan

Shri Subhash Kumar Malviya,
156, Mahamai ka Bagh,
Bhopal (MP)

.....Workman/Union

Versus

Divisional Railway Manager,
Central Railway
Bhopal

.....Management

AWARD

Passed on this 12th day of April -2010

1. The Government of India, Ministry of Labour vide its Notification No. L-41012/131/96-IR (B) dated 13-8-97, has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of Divisional Railway Manager (P) Central Railway, Bhopal in terminating the services of Shri Subhash Kumar Malviya by an order dated 21-8-95 is and justified or not? If not, to what relief the applicant is entitled for?”

2. The case of the workman, in short, is that the workman was engaged by the management on the basis of casual labour card for 12 years and was for the first time posted at Bina under A.E.E./R.E. On passing the departmental examination, he was transferred to Habibganj under E.F.M, Habibganj. The workman was issued casual labour card bearing No. 258616 by the Public Works Inspector (South), Bhopal, It was alleged that the said card was fake casual labour card. The memorandum of charges was thus served on him. The management did not consider the reply of the charges and an Enquiry Officer Shri J. S. Ahuwalia was appointed to conduct the departmental

enquiry. The Enquiry Officer conducted the enquiry without following the principle of natural justice, the workman was not allowed to take the assistance of defence assistant. He became sick and gave a sick certificate but the Enquiry Officer proceeded the enquiry ex parte against the workman. The Enquiry Officer submitted ex parte enquiry report holding him guilty of the charges without giving the copy of enquiry report. The punishment of removal from service was passed by the Disciplinary Authority. The workman preferred an appeal but no order is yet passed. It is alleged that in similar situated cases, the management simply issued warning to Shri Brijlal and Shri Bhagwan Singh the workman is said to have been denied equal protection of law. It is submitted that the reference be decided in his favour.

3. The non-applicant/management appeared and filed written statement in the reference. The case of the management, inter alia is that the workman worked under the management from 9-8-85 to 21-8-95 till his removal. It is stated that the workman was working on the basis of casual labour service card bearing no. 258616 which was found not genuine. He was served with a chargesheet. After his reply, the enquiry was conducted. Sufficient opportunities were given to the workman to defend himself. On the application of the workman retired Time-keeper Shri B.K. Choubey was permitted to assist the workman to defend him but when he failed to participate in the proceeding Shri R.S.P. Singh was permitted by the Enquiry Officer on the nomination of the workman. It is stated that the workman tried to evade the enquiry and he and his Defence Assistant did not attend the enquiry in spite of his convenient date. Lastly the Enquiry Officer proceeded ex parte. After enquiry, the Enquiry Officer found the charge as proved and submitted his report. The copy of the enquiry report was served on the workman with show cause. After considering his representation, the Disciplinary Authority passed the order of removal from service on 29-12-94. It is stated that the enquiry was done in accordance with rules and the principle of natural justice was followed. His case was different from the case of Brijlal who had already been regularized as a fresh case before his removal from service. It is stated that the workman was found guilty of gross misconduct and therefore his punishment was just and proper. Under the circumstances, the workman is not entitled to any relief.

4. Subsequently the workman became absent. Lastly the then Tribunal proceeded the reference ex parte against the workman on 5-5-2006.

5. Now the only issue is as to whether the action of management in terminating the service of the workman is justified or not.

6. The management has examined and has filed photocopies of the documents of the departmental enquiry. The management witness Shri Anil Kumar Shrotri is Chief Office Superintendent. He has stated that the workman was working on the basis of casual labour card and the

same was found fake. He was chargesheeted. He has stated that the workman nor his defence Assistant attended the enquiry and the Enquiry Officer proceeded ex parte and submitted enquiry report after enquiry. His evidence further shows that the Disciplinary Authority after considering the entire material, imposed the punishment of removal from service vide order dated 21-8-95. His evidence proves that the opportunities were given to the workman but he him self evaded the proceeding.

7. The photocopies of the documents of the departmental enquiry also establish that the principle of natural justice was followed and therefore the departmental enquiry is held legal and proper.

8. On the basis of the discussion made above, it is clear that the reference is also proceeded ex parte because the workman has himself left the reference. The burden is on the workman to show that the punishment of removal from service was not justified and any lesser punishment in lieu of removal from service was required. In absence of any such evidence in the case, I find that there is no need to interfere in the punishment awarded to the workman and the punishment is just and proper. Accordingly the reference is answered in favour of the management.

9. In the result, the award is passed ex parte against the workman without any order to costs.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2010

का.आ. 1296.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इन्दौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 18/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2010 को प्राप्त हुआ था।

[सं. एल-12012/273/2003-आईआर (बी-1)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th April, 2010

S.O. 1296.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2004) of the Central Government Industrial Tribunal-cum- Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of Indore and their workman, received by the Central Government on 26-4-2010.

[No. L-12012/273/2003-IR (B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R 18/04

Presiding Officer : Shri Mohd. Shakir Hasan

The General Secretary,
State Bank of Indore Employees Union
C/o State Bank of Indore,
Zonal Office, I, Area Hills,
Jail Road,
Bhopal (MP)

.....Workman/Union

Versus

The General Manager (Operations),
State Bank of Indore, Head Office
5, Yeshwant Niwas Road,
Indore

.....Management

AWARD

Passed on this 9th day of April, 2010

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/273/2003-IR (B-I) dated 26-2-2004, has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of General Manager (O) State Bank of Indore in not ensuring payment of wages and other benefits of the settlement according to Bipartite Settlement and paying her scale wages without DA, CCA & HRA in R/o Smt. Onkari Bai, Sweepress is justified? If not to what relief the workman is entitled for ?”

2. In this reference, the award was passed by the predecessor's Tribunal on 11-4-2008 and the same was notified on 29-4-2008. Thereafter the Dy. Chief Labour Commissioner (Central) Jabalpur on receipt of the copy of the award sent a letter No. J-2 (97)/2008/IR dated 21-7-2008 stating therein that the name of the workman entitled for relief, i.e. ensuring payment of wages and other benefits of settlement has been mentioned as Smt. Onkari Bai, Sweepress whereas in the last page the name of the workman is mentioned as Smt. Krishanabai in the award and the CGIT number is mentioned as CGIT/LC/R/15/2004. Accordingly it is requested to look into for due necessary action.

3. On perusal of the record, it appears that such mistake was occurred in filing copy of settlement by the parties and the error was committed by the predecessor's Tribunal. It appears that under the provision of Rule 28 of the Industrial Dispute (Central) Rules, 1957, such correction is needed. The parties are, accordingly noticed. The

management filed a fresh petition with copy of settlement to pass an appropriate award in terms of settlement arrived between Onkari Bai and the non-applicant Bank. The said settlement is duly verified by the Advocate of the non-applicant Bank. The memorandum of settlement are reproduced as follows.

“(i) That Smt. Onkari Bai shall be absorbed by the bank on part time permanent basis w.e.f. 1-8-2001.

(ii) That Smt. Onkari Bai shall be eligible to get DA, CCA & HRA as applicable to the part time permanent employees of the bank w.e.f. 1-8-2001.

(iii) That the other benefits like deduction of P.F. Group Insurance, all kinds of leave, LFC (on prorated basis), Gratuity and leave Encashment on superannuation shall be made available w.e.f. 1-1-2006 to Smt. Onkari Bai.

(iv) That the State Bank of Indore employees Union (MP) and Bank shall record the compromise settlement in the CGIT and the Employees Union shall have no claim with regard to the Industrial dispute bearing No. CGIT/LC/R/18/2004”.

4. The aforesaid terms of the settlement appear to be legal, just and fair in the interest of the workman. Accordingly fresh award is passed in terms of settlement and the previous award is deemed to be corrected. There is no order as to costs.

5. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2010

का.आ. 1297.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एन एफ रेलवे के प्रबंधन के संबंध में निम्नलिखित विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असम के पंचाट (संदर्भ संख्या 21/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2010 को प्राप्त हुआ था।

[सं. एल-41012/147/2005-आईआर (बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th April, 2010

S.O. 1297.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Assam as shown in the Annexure in the Industrial dispute between the management of N.F. Railway and their workman, received by the Central Government on 26-4-2010.

[No. L-41012/147/2005-IR (B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present : Shri D. K. Deb Roy, M.A.L.L.B., Presiding
Officer

CGIT-Cum-Labour Court, Guwahati

Ref. Case No. 21/2006

In the matter of an Industrial Dispute between :-

The Management of N. F. Railway, Lumding Division.

Vrs

Their Workman Sri R. K. Choudhury

APPEARANCES

For the Management : Mr. S. N. Choudhury,
Advocate

For the Workman : Mrs. Maya Bora,
Advocate

Date of Award : 12-04-2010

AWARD

1. The present reference is arising out of the Government Notification vide Memo No. -L-41012/147/2005-IR (B-I) Dated : 11-9-2006, to adjudicate the following issue as described in the Schedule.

SCHEDULE

“Whether the action of the management of N.F. Railway, in denying promotion to Sri R. K. Choudhury, Fitter/ Gr.I to the Grade I observing the Departmental instruction at least from the date of promotion of the juniors viz. S/Sri Madhuram Das / Sudhir Ram Hira/ Parimal Mali etc. is justified? If not, to what relief the concerned workmen (i.e. Sri R. K. Choudhury) is entitled to?”

2. On receipt of the Reference Case, notice was duly served upon the parties. Both the parties appeared and submitted their written Statements. In order to ensure fairness and transparency, both the parties were allowed to adduce evidence and they were heard. Some documents have also been exhibited.

3. Here, I feel it convenient to re-capitulate the brief facts of the case of workman namely Ranjit Kumar Choudhury, leading to this proceeding.

4. Factual scenario : The workman Sri Ranjit Kumar Choudhury, now working as Technician Grade-I was initially appointed on 9-3-72 in the N.F. Railway and was working at Pandu Loco repairing shop which was subsequently converted to Wagon repairing Shop. Thereafter the said Organisation was closed and the staff worked therein was declared as surplus. Thereafter a portion of surplus staff was deployed in various units on their option and major portion was deployed in the Carriage and Wagon Trade in Lumding Division maintaining their seniority. It is further

alleged that while the workman was redeployed to Lumding Division no option was taken by the Management. He was with the impression that his seniority will be protected from the date of his appointment. But unfortunately his date of appointment was not counted while inter seniority was determined. According to him Madhu Ram Das, Sudhir Ram Hira and Parimal Mali were junior to him still they were promoted superseding him though there was a letter issued by the General Manager (P) Maligaon dated 8-5-94 for maintaining seniority as per date of appointment. Thereafter an Industrial Dispute was raised before the Assistant Labour Commissioner (Central) but no decision could be arrived at in the conciliation proceeding who in turn submitted a failure report to the Government and thereafter the case was referred to this Tribunal. According to the workman as per service Rules his seniority should have been counted from the date of his appointment but that was not done. The petitioner workman has prayed that he should have been promoted from the date of the promotion of the juniors and entitled to all promotional benefits.

5. The N. F. Railway (in short the Management) has contested the proceeding by filing the written statement refuting the claim of the workman.

According to the Management some surplus staff of WRS/Pandu and Alipurduar Block were redeployed under SSE (C&W) at Lumding Division. The issue of fixing seniority was decided in meeting that took place between the Union and the Management and the outcome of the meeting was circulated vide GM (P)/MLG's No. E/283/63/Pt. XV(BG)(M) Dt 03-05-94. The seniority of the surplus staff along with the staff born at Lumding Division was interpolated vide Office No. E/255/1/LM (C&W) Dt. 07-04-95. According to the Management the other workmen namely Madhu Ram Das, Sudhir Ram Hira, Parimal Mali, C.K. Bonia and Siba Pada Deb were senior to the workman Sri Ranjit Kr. Choudhury so far as the Grade was concerned. According to the Management Madhu Ram Das, Sudhir Ram Das and Parimal Mali were senior as per entry to the Grade of Technician Gr.-III (CF). The Management has submitted a list of workmen who are senior to the workman Sri Ranjit Kr. Choudhury as furnished by the Management.

Sl. No.	Name & Design.	D.O.B.	D.O.A.	Dt. of entry to the Grade
1.	Madhu Ram Das (SC) Tech. Gr. I	15/2/54	16/07/72	29/9/84
2.	Sudhir Ram Hira (SC) Tech. Gr. I	31/12/50	8/09/75 18/12/76	30/12/83
3.	Parimal Mali (SC) Tech. Gr. I	01/02/53	12/06/72	29/9/84
4.	C. K. Bonia (SC) Tech. Gr. I	31/12/54	27/12/78	8/11/85
5.	Siba Pada Deb (UR) Tech. Gr. I	15/2/53	1/06/75	1/06/75 (as apprentices)

The Management has prayed that seniority has been born as per law and no injustice has been done to the workman. Hence the case of the workman is liable to be dismissed.

6. From the pleadings, it is thus seen that the workman is claiming his seniority on the basis of his initial entry in the department whereas the stand of the management is that the workman was junior to other workman so far as Grade is concerned. So his promotion was not considered by the Management.

7. Decision and reasons thereof :

Heard both sides at the Bar. The workman has examined himself as Witness whereas the Management has also examined one witness.

Now let me discuss the evidence on record. The workman in his evidence-in-Affidavit has stated that he was appointed as Khalasi on 8-3-72. Ext. 1 is the appointment letter. In the year 1975 the Marine Establishment was closed down and the persons working there were declared as surplus staff. Thereafter the surplus staff was transferred to various units. The workman has further stated that he along with other skilled persons of different trades were transferred to Lumding Division under DME/Carr & Wagon/LMG on 27-9-91 and the workman was absorbed against regular vacancy as Fitter Gr. III (Group-C) Post and his seniority was counted as per date of entry in the Grade. According to him his seniority should have been counted for promotion from the date of his appointment in the service. Ext. 2 is the letter. According to him he was much senior to Madhu Ram Das, Sudhir Ram Hira and Parimal Mali even though his promotion was not considered by the Management. As a matter of fact he was superseded by his juniors. His juniors were promoted to the post of Fitter Gr. I. The workman has specifically stated that he joined in service on 8-3-72, Madhu Ram Das joined on 16-7-72, Sudhir Ram Hira Joined on 8-9-75 and Parimal Mali joined on 16-4-76. The workman has exhibited two letters i.e. Ext. 3 and 4 respectively. Ext. 5 is the letter issued by N. B. Das addressed to the Assistant Labour Commissioner (Central). This witness has been cross-examined by the Management. In the first line of the cross-examination the workman has said that he joined as Khalasi on 8-3-72 and was absorbed in Loco Repairing Work Shop, N.F. Railway, Pandu. There was no relationship between Marine Establishment and Loco Workshop, N.F. Railway. Due to the closure of Marine Establishment in the year 1975 his service was not affected and he was working as Khalasi till 1991. Thereafter he was promoted as Fitter Gr. III and he was declared as surplus staff and was transferred to Carriage Department. Thereafter he was promoted to Fitter Gr. II in the year 1997. Thereafter he was promoted to Fitter Gr. I in the year 2003. Bala Ram Biswas though was junior

to him was promoted in the next grade superseding himself. Recently Subhash Roy who was junior to him has also been promoted to the next higher grade. In cross-examination this witness has admitted that he is not aware of the letter No. GM (P)/MLG's No.E/283/63/pt.iv(BG)(M) dated 3-5-94 and the letter No. E/55/1/LM/(CNW) dated 7-4-95.

8. Now let me discuss the evidence of Ambeswar Saikia, solitary witness on behalf of the Management. According to him some staff of Wagon repairing establishment, Pandu and Alipurduar Block were redeployed in Mechanical (C&W) department under DME/C&W (Carriage and Wagon) in Lumding Division being declared surplus staff. The principle of seniority was discussed in a meeting represented by two recognized union namely North East Frontier Railway Employees Union and North East Frontier Railway Mazdoor Union and Administration. The outcome of the meeting was circulated vide GM(P)/MLG's No. E/283/63/pt.xv (BG)(M) dated 3-5-94. This witness has further stated that the seniority of the surplus staff along with staff born in Lumding Division was interpolated vide Office letter No. E/253/1/LM/(C&W) dated 7-4-95. This witness has further stated the workmen namely Madhu Ram Das, Sudhir Ram Hira and Parimal Mali were much senior to the present workman Sri Choudhury. According to him Mr. Das, Mr. Hira and Mr. Mali were senior to the present workman as per their entry to the Grade of Technician Gr.III. This witness has submitted a chart showing the entry in the Technician Gr. III. According to the witness the seniority of the present workman Mr. Choudhury was born as per law and no injustice was done to him. This witness has been cross-examined by the learned counsel for the workman. In the first line of the cross-examination this witness has honestly admitted that seniority is counted from the date of appointment. This witness has also admitted that the present workman was a surplus staff and while he was redeployed, his promotional avenues should not have been disturbed when his juniors were promoted.

9. I have meticulously gone through the evidence adduced by the workman vis-a-vis the evidence of the Management. Perused the written argument submitted by the Learned Counsel for the parties in addition to the oral argument. Also heard learned counsel for the parties.

10. The Learned Counsel for the Management in his suave submission has contended inter-alia that the present workman Sri Ranjit Kr. Choudhury joined on 9-3-72 under the Management and Madhu Ram Das, Sudhir Ram Hira and Parimal Mali were junior to the present workman in respect of their initial entry in the department. The Management witness has specifically stated in his evidence

that Madhu Ram Das was appointed on 16-7-72; Sudhir Ram Hira was appointed on 8-9-75 and Parimal Mali was appointed on 12-6-72. It is further argued that Madhu Ram Das had entered into grade on 29-9-84, Sudhir Ram Hira had entered into grade on 30-12-83 and Parimal Mali had entered into grade on 29-9-84. The present workman had entered into grade later on. Thus he was junior to Mr. Das, Mr. Hira and Mr. Mali while determining the inter-se-seniority. The Learned Counsel for the Management has further submitted that seniority of the workman was rightly counted by the department since he was junior to the other incumbents so far as the grade is concerned. According to him seniority is not counted from the date of initial entry in the service rather it is counted from the entry in the grade. According to him the case of the workman appears to be devoid of merit and it deserves to be dismissed.

11. Per-contraria the Learned Counsel for the workman has seriously controverted the submission advanced by the Learned Counsel for the Management. In her efficacious submission she has drawn my attention to the evidence of the Management who in his cross-examination has admitted that inter-se-seniority is counted from the date of appointment. According to her the present workman should have been promoted on the same day when his juniors namely Madhu Ram Das, Sudhir Ram Hira and Parimal Mali were promoted. But unfortunately that has not been done by the Management causing financial hardship and mental agony to the present workman. It is admitted that subsequently the present workman was promoted to Technician Gr. I. the Learned Counsel for the workman has submitted Bahri's Railway Establishment Rules & Labour Laws and drawn my attention to page 226 which runs as thus :

"When re-deploying the surplus staff to other units/departments, which constitute a different seniority unit, the following methods shall be adopted :—

(a) If only a small number of staff are being rendered surplus and they have to be transferred to various units of other departments against vacancies of duly sanctioned posts, they can be suitably adjusted in these units with their full seniority and merging their seniority in the respective units :

(b) When a large number of staff are being transferred to new units that are being set up they should be given their full seniority."

12. It is admitted that the present workman was declared a surplus staff and he was transferred to Lumding Division. So naturally his promotion should have been given on the date when his juniors namely Madhu Ram Das, Sudhir Ram Hira and Parimal Mali were promoted. According to me the Learned Counsel for the workman has

rightly pointed out that the present workman Mr. Choudhury should have been promoted when other 3 junior workmen namely Madhu Ram Das, Sudhir Ram Hira and Parimal Mali were promoted. During the course of argument the Learned Counsel for the parties relied on Advance correction Slip No. 159, Indian Railway Establishment Manual Volume-1 (Revised Edition 1989), Chapter III containing rules regulating seniority of non-gazetted Railway servants. According to the Management existing Para -313, a new Para-313 A may be inserted as follows : "The surplus employees are not entitled for benefit of the past service rendered in the previous unit/department for the purpose of their seniority in the new unit/department. Such employees are to be treated as fresh entrants in the matter of their seniority, promotions etc." Relying on this Circular the learned counsel for the Management has submitted that the seniority and promotion of workman Sri Ranjit Kr. Choudhury was rightly counted by the department.

13. the learned counsel for the workman on the other hand has drawn my attention to Note. II on the same letter which runs as thus : "When two or more surplus employees of a particular grade in a unit /department are simultaneously selected for redeployment in another unit/department in a grade, their inter-se seniority in the particular grade, on redeployment in the later unit/department, would be the same as in their previous unit/department."

The learned counsel for the workman has relied on a decision reported in AIR 1974 Supreme Court 1755, the General Manager, South Central Railway, Secunderabad and another Vrs A.V.R. Siddhanti and Ors, wherein it has been held :—"Once the persons coming or recruited to the service, from two different sources are absorbed into one integrated class with identical service conditions, they cannot be discriminated against with reference to the original source, for the purpose of absorption and Seniority".

"the fundamental right of equality means that persons in like situation, under like circumstances are entitled to be treated alike.... so long as employees similarly circumstanced in the same class of service are treated alike. The question of hostile discrimination does not arise. The equality of opportunity for the purposes of seniority /promotion and like matters of employment is available only for persons who fall substantially, within the same class or unit of service."

(Articles 14 & 16)

The learned counsel for the workman has also relied on a decision reported in (1991) Supp. I SCC 198 (Ramanal Vs State of Himachal Pradesh) wherein it has been observed. "Where a person is entitled to promotion under a statutory rule was unlawfully denied consideration, he would be entitled to be considered for promotion with the

retrospective effect and his seniority would also be fixed on that basis".

The learned counsel for the workman has also relied on a decision reported in (1991) 17A.T.C. 925 Dharma Vs Administrator, wherein it has been observed : "Where a person has been denied seniority by wrong application of the Rules or without any reasonable ground, the COURT MAY DIRECT THE COMPETENT AUTHORITY TO PLACE HIM IN THE HIGHER GRADE WITH EFFECT FROM THE DATE OF WHEN HIS JUNIOR WAS PLACED THEREIN, WITH CONSEQUENTIAL MONETARY BENEFITS."

14. Having heard both sides and having considered the entirety of the facts and circumstances of the case and having regard to the ratio as laid down in the aforesaid decisions, I am constrained to hold that the action of the Management, N.F. Railway, is not justified in law. The workman Ranjit Kr. Choudhury should have been promoted from the date of promotion of his juniors namely, Madhu Ram Das, Sudhir Ram Hira and Parimal Mali.

15. In the result, the workman Ranjit Kr. Choudhury is entitled to get his promotional benefits from the date of promotion of his juniors namely, Madhu Ram Das, Sudhir Ram Hira and Parimal Mali.

16. This issue stands decided in favour of the workman. Prepare the award and send the same to the Ministry as per law.

D.K. DEB ROY, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2010

का.आ. 1298—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदनगर के पंचाट (संदर्भ संख्या 3/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2010 को प्राप्त हुआ था।

[सं. एल-12025/1/2003-आईआर(बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th April, 2010

S.O. 1298—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.3/2003) of the Central Government Industrial Tribunal, Ahmednagar as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 26-4-2010.

[No. L-12025/1/2003-IR (B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE**BEFORE SHRI V. P. UTPAT, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, AHMEDNAGAR****Reference (IT) NO. 3/2003**

State Bank of India,
The Deputy General Manager,
Disciplinary Proceeding Section,
"Gulmohor", East Street,
Pune - 411 001

...First Party

Versus

Vitthal Runjaba Aher,
R/o. Laxmi - Narayan Market,
Shop No.3, Shrirampur,
Tal - Shrirampur, Dist - Ahmednagar

...Second Party

CORAM: SHRI V. P. UTPAT, PRESIDING OFFICER**Advocates:**

Shri A. S. Pingale for 1st Party
Shri K. Y. Modgekar for 2nd Party

AWARD**(Delivered on 26-11-2009)**

(1) This reference is referred by Ministry of Labour, Central Government of India with respect to Industrial Dispute between State bank of India, Pune and its workman U/s. 10 R/w Sub-Section 2 (A) and 1 (D) of Industrial Dispute Act, 1947 for recording the findings on the issue as to whether the action of management of State Bank of India, Zonal Office, Pune in terminating the services of Shri Vittal Runjaba Aher, Messenger, Shrirampur Branch is fair and justified, if not, what relief the concerned workman is entitled to?

(2) After receiving the reference notices were issued to both parties for filing their respective statement of claims. Both parties have appeared in the court and filed their respective claims. The gist of the statement of claim filed by second party i.e. employee is that he was working as Messenger in the branch of first party at Shrirampur since 1979 till 4-9-1999 as a Class-IV employee. The facility of house loan is provided to the employees of first party on condition to repay the loan amount by installments from the salary. There is also practice to mortgage the house with the first party till the satisfaction of the loan and if the loan is not satisfied the first party is entitled to take the possessions of the said house. The payment of provident fund amount, gratuity and other retirement benefits are also subjected to the satisfaction of the house loan.

(3) The second party purchased one and half guntha land at Shrirampur and obtained permission from the municipality for the construction. He took loan from the first party in installments as per the progress of the construction and deposited the documents with the first party. The second party has agreed not to transfer the land

and ground floor till the satisfaction of the loan. In order to meet the expenses of the construction the second party has constructed second floor and decided to sell out the second floor. The second party is using the ground floor for his own purpose.

(4) He has not committed any misconduct still he has received the show-cause notice from the first party dated 11-6-1998. He had furnished apology and submitted his explanation that he had not sold out property which was mortgaged with the first party. Still the charge sheet was issued to the second party. During the course of enquiry the principles of natural justice were not followed and opportunity for cross examining the witness was not given. Still the first party has observed that the second party has committed misconduct and dismissed him from service. After considering the request of second party the order of dismissal was converted into discharge hence he has made grievance that even though he has not committed any misconduct he was discharged as he had sold out the upper floor for the satisfaction of other debts, his brother was seek and died subsequently, his mother was also ill and he was unable to satisfy the loan of bank. According to him the order of discharge dated 4-9-1999 is illegal, improper and he may be reinstated with continuity of service and full back wages.

(5) The first party has filed its statement of claim vide Exh C-6. It is the case of first party that the contents of statement of claim which is filed by the second party are not correct. The second party has suppressed the material facts. His conduct was not proper. The contents of statement of claim are false. The contents regarding the service tenure of second party are not disputed but it is denied that his record was clean and unblemish. According to first party the second party has taken housing loan of Rs. 1,99,700 during 1987 to 1998. He has constructed the house admeasuring 1000 sq. ft on ground floor and 400 sq. ft on upper floor. He has executed the equitable mortgage of the entire plot and construction thereon which was made out of bank finance as security for the repayment of the loan.

(6) Mr. B. M. Pawar has purchased the upper floor admeasuring 400 sq. ft from the second party for Rs. 1,40,000 without consent of the first party and diluted the security of the bank and that amount to gross misconduct under Shastri Award.

(7) The first party has issued memorandum dated 1-6-1998 to second party and called explanation about the sale of upper floor without permission. He has submitted the letter of apology dated 29-6-1998. The second letter dated 1-9-1998 was issued to him directing to deposit the entire sale proceeds in the loan account and he was directed that failure to deposit the said amount he will be liable for disciplinary action. In spite of the said letter the second party has not deposited

the consideration amount in loan account hence enquiry officer was appointed for conducting enquiry regarding the misconduct of second party the disciplinary authority had issued charge sheet dated 10-10-1998 which was received by second party on 15-10-1998. He had engaged the officer of the union during the course of enquiry. The first party has produced in all 13 documents. The defence representative has admitted all the documents as these were executed by second party. After hearing and considering the submissions of both parties the enquiry officer has observed that the charges levelled against him were proved. The show-cause notice was issued to second party on 4-9-1996 and after considering the explanation submitted by the second party the disciplinary authority has taken compassionate view and the punishment of dismissal without notice was reduced to discharge with superannuation benefits by final order dated 4-9-1999. That order was challenged by second party in the appeal of 12-11-1999. After hearing the second party the appeal was dismissed by order dated 25-2-2000.

(8) It is denied by the first party that the house loan was obtained only for the ground floor construction admeasuring 1000 sq. ft. It is denied that the findings recorded by enquiry officer are perverse and the enquiry officer had acted with bias. It is also denied that the second party was unemployed and facing greater hardship since the date of termination. It is also denied that he is entitled for reinstatement with continuity of service and full back wages. It is submitted that the principles of natural justice were followed during the enquiry and the representative of the choice of second party was allowed to defend charges levelled by the first party. It is further contended that the employee must be honest and straight forward in his behaviour as the bank has to carry out the financial transactions with its customers. Ultimately the first party has prayed for dismissal of the reference.

(9) After considering the pleadings of both parties following issues are framed by my predecessor vide Exh O-6. After recording the evidence of both parties and hearing the argument of both counsels my findings on issues for the reason thereon are as follow :—

Issues	Findings
(1) Whether the reference as framed is tenable under law?	In the affirmative
(2) Whether the party No. 2 proves that the enquiry conducted against him was in utter disregard of the principles of natural justice?	In the affirmative

- | | |
|--|---|
| (3) Whether the findings drawn by the enquiry officer are perverse? | In the affirmative |
| (4) If yes, whether the party no. 1 has proved the misconduct of the Party No. 2 before court? | In the negative |
| (5) Whether the awarded punishment is disproportionate and unjustified ? | In the affirmative |
| (6) Whether the party No. 2 is entitled for relief as prayed? | In the affirmative |
| (7) In what manner the Reference is answered? | Reference is answered in favour of 2nd party. |

REASONS

(10) Issue No. 2 and 3 were treated as a preliminary issue. Both parties had adduced the oral as well as documentary evidence and my predecessor has decided these issues in favour of the second party by order dated 12-3-2007. It has been observed that the enquiry was not conducted by following principles of natural justice and enquiry officer has not supplied the copy of findings recorded by him hence enquiry was vitiated and the first party is allowed to adduce his evidence in the court in order to prove the charges levelled against the second party.

(11) The witness Vilas Ramchandra Kulkarni is examined on behalf of first party vide Exh C-21. He is cross examined at length. He has produced 17 documents along with list Exh C-16 and 14 documents along with list Exh. C-11 vide Exh. C-24 to C-37. These documents are relating to the enquiry conducted by the first party. He has also produced documents regarding the housing loan transaction between first party and second party along with list Exh C-12 and these are at Exh C-39 to C-45. These are proved by Shri V. R. Kulkarni in his oral evidence. The second party has examined himself vide Exh. U-19. He has produced valuation certificate of his property along with list Exh. U-14. It reveals from the valuation certificate that the price of open plot and construction is Rs. 4,56,700.

(12) It is the case of the first party that the second party is Class-IV employee working in its branch at Shirampur. He took loan of Rs. 1,99,700. He has constructed the house and sold out upper floor of his house to one Pawar and he has committed misconduct as referred in Section -521 sub section 4 (d) and 4 (j) of Shastri Award which is treated as service condition and rules for taking

disciplinary action against the employees of State Bank of India. It is convenient to reproduce Section 521, 4 (d) and 4 (j).

Sec. 521: A person against whom disciplinary action is proposed or likely to be taken should, in the first instance, be informed of the particulars of the charge against him; he should have a proper opportunity to give his explanation as to such particulars. Final orders should be passed after due consideration of all the relevant facts and circumstances. With this object in view we give the following directions.

(4) By expression “gross misconduct” shall be meant any of the following acts and omissions on the part an employee;

Sec. 521, 4 (d) : Willful damage or attempt to cause damage to the property of the bank or any of its customers;

Sec. 521, 4 (j) : Doing any act prejudicial to the interests of the bank, or gross negligence or negligence involving or likely to involve the bank in serious loss;

As per the procedure laid down in Section 3 the particulars of the charges levelled against employee must be informed to him. It reveals from the charge sheet which is issued against second party that the charge is containing merely Section -521, 4 (d) and 4 (j). No particulars of these Sections are referred in the charge sheet. The charge sheet is produced along with list Exh C-16 at Sr. No. 4. As per the contents of Section 521, 4 (d) the first party has to prove that the second party has committed gross misconduct by causing willful damage or attempt to cause damage to the property of the Bank or any of its customers. As per Section 521, 4 (j) the first party has to prove that the second party by doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in house loan.

13) It is significant to note that the charges were never read over to the second party merely it has been communicated that he had obtained housing loan and he has sold out upper floor of his house and not deposited the sale proceed in the loan account. It is very difficult to accept that the second party who is Class-IV employee has understood the charges which were levelled against him as the contents of the charges were not mentioned in the charge sheet.

14) The admitted facts in the present proceeding are that the second party is the Class - IV employee of the first party since 1979. He has obtained the housing loan and he had mortgaged his plot and ground floor with first party by way of security. He has also executed a letter to first party that the amount of provident fund and pension can be appropriated towards the unsatisfied loan. There is no dispute that the monthly installments of the loan were recovered from his salary regularly.

(15) It appears that from the suggestion given in the cross examination of the second party that the land and first floor was mortgaged with the first party. This fact is also admitted by the witness Kulkarani in his cross examination. In these circumstances by any stretch of imagination it cannot be held that the security which was given by the second party was diluted. The second party has attempted to deposit Rs. 70,000 after selling the upper floor but that amount was not accepted by the first party. As there is no evidence before the enquiry officer or before this court that the second party had attempted to dilute the security which was given for the housing loan in such circumstances it is very difficult to accept that the employer has proved the charges of misconduct under Section - 521, 4 (d) and 4 (j) of Shastri Award. It is significant to note that mortgaged property is still in the possession of the second party then it cannot be said that the second party had caused damage to any property of Bank or its customers as alleged in Sec. 521 4 (d) of Shastri Award. The charge under Section 521, 4 (j) is regarding doing any act prejudicial to the interest of the bank or gross negligence which is likely to involve the bank in serious loss. It has come on record that the mortgaged property is intact. The second party was regularly paying loan instalments from his salary even though it is admitted that he has sold the upper floor to third party. It cannot be said that the said act was prejudicial to the interest of the bank and so thereby the bank has suffered a serious loss. In my opinion there is no iota of evidence before the court to held that second party is guilty of misconduct under Section - 521, (4) (d) and (4) (j) of Shastri Award the first party has produced voluminous documentary evidence and that is not disputed by the second party. The enquiry is already vitiated hence those documents need not be considered at this stage. The documents regarding loan transaction are fairly admitted by second party and there is no dispute about these documents. The defects in the present enquiry are that the particulars and details of the charges under Section 521, 4 (d) and 4 (j) are not at all explained to the second party. The evidence which is adduced in the court is short to prove the charges of sustaining damage and loss to the first party.

16) This reference is made for the determination as to whether the action of the management State Bank of India, Zonal Office, Pune in terminating the services of Shri Vittal Runjaba Aher, Messenger, Shrirampur branch by way of discharge with pensionary benefits is fair and justified. In my opinion the punishment imposed by first party is not justified at all. The second party has adduced evidence regarding expenses incurred for his family after the termination. According to him his wife was doing petty work in Mangal Karayalaya and maintaining his family. He has made efforts for job but he could not get the same. In such circumstances I held that the second party has proved that he was not gainfully employed during the

course of unemployment. Hence, he is entitled for continuity of service and back wages. The enquiry is vitiated, charges are not proved on that ground also he is entitled for back wages. I answer the issues accordingly and pass the following order :—

ORDER

(1) The reference is answered in favour of the Second Party workman.

(2) It is hereby declared that the punishment of discharge with pensionary benefits which is imposed upon the second party is set aside. The first party is directed to reinstate the second party workman with continuity and back wages w.e.f. 4-9-1998 till reinstatement. The amount of back wages be adjusted towards the house loan account of second party.

(3) In order to maintain fair relations between the parties both parties shall bear their own costs.

(4) Copies of this Award be sent for publication.

Ahmednagar :

Date: 26-11-2009

V. P. UTPAT, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2010

का.आ. 1299—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लाइफ इन्शोरेंस कारपोरेशन आफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं.-2, मुम्बई के पंचाट (संदर्भ संख्या 41/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2010 को प्राप्त हुआ था।

[सं. एल-17012/25/2004-आईआर(बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th April, 2010

S.O. 1299—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Life Insurance Corporation of India and their workmen, received by the Central Government on 26-4-2010.

[No. L-17012/25/2004-IR (B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 2, MUMBAI
PRESENT

A. A. LAD, Presiding Officer

Reference No. CGIT - 2/41 of 2005

Employers in relation to the Management of Life Insurance Corporation of India

The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office-II,
112, Sion Koliwada Road,
Sion, Mumbai 400 022.

...First Party

Versus

Their Workman

The General Secretary,
Insurance Employees' Union,
88/112, Sion Koliwada Road,
Sion, Mumbai-400 022.

... Second Party

APPEARANCES

For the Employer : Ms. A. A. Sakpal &
Ms. F. D. Lewis, Representatives

For the Workmen: Shri C. S. Dalvi, Representative

Date of reserving the Award II : 1-4-2010

Date of passing the Award II : 5-4-2010

AWARD - PART - II

1. By Part-I Award dated 18th February, 2010 this Tribunal observed enquiry not fair and proper. This Tribunal also observed finding perverse and directed 1st Party to lead evidence to justify its action.

(2) In short (I do not want to repeat the entire pleadings of both since it is very well reproduced minutely at the beginning of Part-I Award) the case of the Union is that, the concerned employee i.e. Manikade, for whom it is fighting, was initially posted as a Class III employee and on 2-5-1990. It is case of the Union that, he was then promoted as Higher Grade Assistant. It is case of the Union that, on 10-4-1997 said Manikade by letter of even date informed the Branch Office where he was working, about his absenteeism, due to sickness of his mother and requested the Branch office for grant of privilege leave from 7-4-1997. According to Union said letter was delivered to Management and then Manikade by telegram dated 27th April, 1997 informed the Branch office about his inability to report on duty due to continuous sickness of his mother. It is case of the Union that he also informed the Branch office that, there is nobody in his house to look after his ailing mother and request to grant Privilege Leave from 7-4-1997. After waiting for the recovery of his mother from sickness, he again informed the Management that, he will report on duty on 2-5-1997. However, due to continuous sickness of his mother he was unable to report on 2-5-1997. It is case of the Union that, as he could not report, Management sent various letters to his address recorded in the Management office informing him to report on duty

immediately. It is case of the Union that, as Manikade did not report on duty, Management proceeded against him issued charge sheet and conducted enquiry. It is case of the Union that, Management alleges that it informed Manikade by sending various correspondence addressed to him about the same. It is case of the Union that, none of the letter or correspondence was served on the concerned workman Manikade. It is case of the Union that, he was not made known about the appointment of the Enquiry Officer, about the charge sheet issued against him and about the dates fixed for recording evidence in the enquiry. It is case of the Union that, enquiry proceeded ex-parte and in the said enquiry Enquiry Officer concluded said Manikade guilty of the charge of absenteeism. It is case of the Union that, on receipt of the finding from the Enquiry Officer, Management decided to take action against Manikade and informed Manikade to reply said decision. It is case of the Union that, however, said finding was not served on Manikade and he was not made aware about the finding of the Enquiry Officer nor about the decision taken by the Disciplinary Authority. According to Union, Management without waiting for Manikade's explanation, took action of his removal from the services w.e.f. 30-12-1997. According to Union said decision of the 1st party is not proper alleging that, same was taken by the Management on faulty enquiry and on faulty finding given by the Enquiry Officer. Whereas case of the Management is that, ample opportunity was given to the concerned workman Manikade. It is case of the Union that, various notices were send and displayed on the Notice Board. It is case of the Union that, however, no cognizance was taken by the concerned workman Manikade about the charges levelled against him and about the inquiry initiated and various dates given and findings given by the Enquiry Officer. It is case of the Management that, after giving ample opportunity and long rope to the concerned workman decision of removal of Manikade was taken which is just and proper. According to Management false story is made out by the concerned workman Manikade about sickness of his mother vis-a-vis about his sickness. It is case of the Management that, he purposely remained absent from the work and did not take cognizance of the enquiry as well as various notices displayed on the Notice Board. It is case of the Management that, Manikade was not interested in the work. It is case of the Management that, on number of occasions previously on sole ground of his absenteeism, Manikade was penalized. It is stated that, there was no reason for Manikade to remain absent and he has not justified his absenteeism before the Enquiry Officer as well as in this Court though he got no opportunity to do so. It is submitted that, the action taken of his removal from services is just, proper and does not require to interfere.

(3) After recording evidence in Part-I Award i.e. on the point of fairness of enquiry and perversity of the finding of the Enquiry Officer, this Tribunal observed that

enquiry was not fair and proper. This Tribunal also observed finding perverse and directed 1st party to lead evidence and justify its action.

(4) Both led evidence, i.e. by 1st Party by examining Arun Dattatraya Sawant at Exhibit 49, Ms. Rukhimini Hariharan at Exhibit 50, Ms. Pragita Pramod Potdar at Exhibit 51, Smt. Surekha Parashram Mahale at Exhibit 52 and Smt. Mahalaxmi Madan Gopal at Exhibit 53. Against that 2nd Party examined concerned workman Manikade at Exhibit 56 and pray for issuing witness summons to Dr. Sanjay Kumawat which was allowed 2nd Party to examine Doctor who allegedly treated him. However, by Exhibit 64 he expressed his inability to keep witness Dr. Sanjay Kumawat present to prove the treatment taken by the concerned workman from the said Dr. Kumawat for the alleged mental shocks received by the concerned workman due to sickness of his mother.

(5) Written arguments are submitted by 1st party at Exhibit 63 and by 2nd Party at Exhibit 64.

(6) In view of this situation we are now on the point of action taken by the Management of removal. On that point issues are there framed at Exhibit 10 which I answer as follows :

Issues	Findings
5. Whether termination given by 1st Party has justification?	Yes
6. Is second party entitled to rein-statement?	No
7. Is second party entitled to backwages continuity of service?	Does not arise.
8. What order?	As per order passed below.

REASONS

Issue Nos. 5 to 7 :

(7) This time we are on the point of action taken by the Management of removal of Manikade who was its employee.

(8) This Tribunal by Part-I Award initially observed enquiry not fair and proper and finding of the Enquiry Officer perverse. Said Award was challenged by the 1st party by filing Writ Petition No. 1239 of 2007 where Hon'ble High Court set aside the Part-I Award and directed this Tribunal to consider the case of both on the evidence and directed to decide Part-I Award. Accordingly Award Part-I was decided holding enquiry not fair and proper and finding perverse. Said was again challenged before the Hon'ble

High Court by filing Writ petition No. 1843 of 2009 in which again reference was sent back for fresh decision directing this Tribunal to dispose of those 2 issues and observed that, in any event if this Tribunal comes to the conclusion that, the enquiry is not fair and proper and finding not perverse it shall give an opportunity to 1st party to lead evidence and dispose off the entire matter before 5th April, 2010. Most of the witnesses i.e. witnesses Nos. 2 to 5 which are examined to justify the action of Management are on the point of notices displayed on the Notice Board where 2nd party was working. This Tribunal observed inquiry not fair and proper still these witnesses are examined now. However, all the witnesses admit that, they were not examined in the Inquiry. Even they admit that, no their evidence was recorded by the Enquiry Officer while observing concerned workman guilty of the charge of absenteeism.

(9) Now opportunity is given to the Management to justify its action of removal. At the same time opportunity is also given to the 2nd Party how concerned workman can justify his absenteeism? However, it is to be noted that, concerned workman Manikade failed to establish that, he has good reason to remain absent and the reason for which he was absent was genuine. From this it appears that, the case made out by the concerned Workman Manikade that, his mother was sick and then he failed sick is not supported by cogent and satisfactory evidence though Manikade was offered opportunity to do so. In the enquiry he did not participate. Even in this Court though opportunity was given to Manikade to examine Dr. Sanjay Kumawat to establish about his sickness and genuineness about absenteeism, he failed to do so. Though it was time bound matter still opportunity was given who did not take it properly and did not make efforts to bring Dr. Kumawat as a witness to prove that alleged certificate were issued by him and he was under his treatment. Even previous record reveals that, he was convicted for his absenteeism from 17-2-1997 to 23-7-1997. It also reveals that, he was censured by order dated 21-3-1994 for his unauthorized absence from 31-12-1993 to 9-2-1994. It also reveals that he warned about his conduct of remaining absent unauthorisedly by letters dated 7-6-1991, 12-6-1991, 9-8-1991, 25-8-1991 and 15-3-1991 and then he was penalized for his absenteeism which led 1st Party to take action of his removal from the services of the 1st party. Besides he challenged the decision after 3 years. Even he admits that, he approached Management after his removal on 28-9-2001. It is to be noted that, said removal on 28-9-2001. It is to be noted that, said removal is from 30-12-1997 and concerned workman approached for the first time on 28-9-2001 and nothing is shown what happened during that period and nothing is stated why he did not approach earlier to Management on that point.

His case is that, he was mentally disturbed. As stated above, no evidence is led by him in support of his contention, no cogent evidence is led by him to substantiate reason of his sickness or sickness of his mother, except saying that, his mother was sick and then he was mentally disturbed. Nothing is on the record except copies of the certificates and prescriptions of his Doctor. All this reveals that, he was not having good reason which was just and proper to the concerned workman Manikade to remain absent from duty.

(10) If we consider all this coupled with the case made out by 1st Party in conducting the enquiry as well as by sending various correspondence coupled with the approach of the concerned workman, it reveals that, he did not bother to enquire with the Management as to what happened to his employment for 3 years since he approached for the first time in 2001? All this lead us to conclude that, the concerned workman was not at all interested in the employment of the 1st Party and the action taken by the 1st party of removal of the concerned workman Manikade appears to be just and proper and does not require any interference. So I answer above Issues to that effect.

(11) Considering all this coupled with the case made out by both I conclude that, decision taken by the 1st party of removal of the concerned workman Manikade from its services is just and proper and does not require any interference. Hence, the order :

ORDER

Reference is rejected with no order as to its costs.

Mumbai,
5th April, 2010.

A. A. LAD, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2010

का.आ. 1300—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल इन्शोरेन्स कम्पनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, दिल्ली के पंचाट (संदर्भ संख्या 19/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2010 को प्राप्त हुआ था।

[सं. एल-11072/40/2003-आईआर(बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th April, 2010

S.O. 1300—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.19/2004) of the Central Government Industrial Tribunal/cum-Labour-Court, Delhi as shown in the Annexure in the Industrial

Disputes between the management of National Insurance Company Limited and their workmen, received by the Central Government on 26-4-2010.

[No. L-11072/40/2003-IR (B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. I, KARKARDOOMA COURTS
COMPLEX, DELHI
I.D. No. 19/2004**

Vijay Kumar, S/o Shri Ram Singh,
E-209, Mangol Puri,
Delhi - 110083

.....Claimant

Versus

The Manager,
National Insurance Company Limited,
Jeevan Bharti Tower- II, Level-IV,
124 - Connaught Place,
New Delhi - 110001

.....Management

AWARD

Casual work was taken by the Divisional Manager, National Insurance Company Limited (hereinafter referred to as the management) from Shri Vijay Kumar. He was paid for the work done by him on daily basis. When he was disengaged, he raised a claim for reinstatement of his services. Management had not paid heed to his claim, hence a dispute was raised by him before the Conciliation Officer. Since conciliation proceedings failed the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L -11072/40/2003-IR (B-I), New Delhi dated 22nd of March, 2004 with the following terms :

“Whether the action of the management of National Insurance Company Limited, New Delhi in terminating the services of Shri Vijay Kumar, Ex-Temporary sub-staff with effect from 25-5-2000 is just, fair and legal? If not, what relief the workman is entitled to and from which date?”

2. Claim statement was filed by the claimant pleading therein that he was engaged by the management at its Division No. 15, Himalaya House, K. G. Marg, New Delhi, since 26-6-90. He worked there as tea boy/ water boy for a continuous period of 240 days in each calendar year. He performed his duties to the satisfaction of the management. A certificate to that effect was issued by the internal audit of the management wherein it has been acknowledged that he had rendered 240 days continuous service. No appointment letter or wage slip was ever issued to him. His services were terminated on 25-5-2000 without any notice or pay in lieu thereof. No retrenchment compensation was paid. The management violated even an order passed by

the High Court of Delhi in that regard. He presents that as per policy dated 18-2-98 he is entitled for absorption in the services of the management. He claims that his services may be reinstated with continuity and full back wages and be regularized in the services of the management.

3. The management demurred the claim pleading that there exist no relationship of employer and employee between the parties. Since there was no privity of contract, there does not exist an industrial dispute. Claimant was engaged in supplying tea to the persons working in office situated at Himalya House, Kasturba Gandhi Marg, New Delhi. As and when there was exigency of work, casual work was taken from him. He performed that work in the capacity of an independent contractor. There was no post with the designation of water boy/tea boy with the management. In case he was engaged for any casual job, his engagement came to an end after completion of the job. Consequently the claimant cannot plead that he was an employee of the management and rendered 240 days continuously in a calendar year. His claim of reinstatement as well as absorption is liable to be dismissed.

4. Management has examined Shri Ramesh Chand and Smt. Indu Sharma to substantiate its stand. No evidence was adduced on behalf of the claimant.

5. On 29-12-09 claimant opted to abandon the proceedings. The Tribunal was constrained to proceed with the matter under rule 22 of Industrial Disputes (Central) Rules 1957.

6. Shri B. S. Rana, authorized representative, advanced arguments on behalf of the management. None opted to dispel his submissions. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

7. Shri Ramesh Chand deposed that he was serving the management since January, 79. He had worked in Divisional Office No. 15 of the management, which is located at Himalaya House, 1st floor, K. G. Marg, New Delhi, from November, 95 till June 99. Various offices are located in Himalaya House, K. G. Marg, New Delhi. Management does not have any post with the designation of tea boy/water boy. Whenever any recruitment is made for sub staff or clerical cadre, either names are called from Employment Exchange or an advertisement is given in the newspaper, inviting applications from open market. Management is a public sector undertaking. Ex-servicemen are being recruited through Director General Resettlement. Management has its recruitment rules for recruiting sub staff or in clerical cadre. Ex. MW1/1 is copy of the recruitment rules. Ex. MW1/2 to Ex. MW1/6 are letters written by the Director General Resettlement, inviting applications from Ex-servicemen for employment in sub staff category.

8. Vijay Kumar was serving tea to officials posted in Divisional Office 15 of the management. He used to submit his daily bills for tea served to the officials. Those bills were paid through vouchers. Many a times he used to submit his weekly bills. He was not an employee of the management. His name was never forwarded by the Employment Exchange for appointment as sub staff. He used to serve tea to employees working in other offices located in Himalaya House, K. G. Marg, New Delhi. He concedes that often and then Vijay Kumar used to fill water in water coolers. He was paid for that job through petty cash vouchers. Vouchers for the months of May, 1997 reflects that payment on petty cash voucher was made to Sanjay tea stall for filling water in cooler. No written contract was executed between the management and Vijay Kumar to work as a contractor.

9. Smt. Indu Sharma deposed that small tea stalls are there in near vicinity of Himalaya House, New Delhi. Vijay Kumar used to serve tea to officials of the management working in Himalaya House, New Delhi. Someone else other than Vijay Kumar also used to serve tea in Himalaya House. Vijay Kumar never applied for any job with the management. Vijay Kumar was paid through petty cash voucher in respect of bills submitted by him. He used to supply tea to visitors also.

10. Out of facts projected by Shri Ramesh Chand and Smt. Indu Sharma it emerge over the record that Vijay Kumar used to supply tea to officials of the management. He used to raise his tea bills for which he was paid through petty cash voucher. Often and then casual work was taken from him, for which he was also paid by the management. When he performed casual work, he took the job as a contract for service and not as contract of service. Consequently it is emerging over the record that Vijay Kumar was working as an independent contractor, when he served tea to employees of the management. He raised his tea bills, for which he was paid through petty cash vouchers.

11. Relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee at the time when his services were engaged, need not have known the identity of his employer, there must have been

some act or contract by which the parties recognized one another as master or servant.

12. No evidence worth name has been brought over the record by Vijay Kumar that he was ever engaged by the management as its employee. There is not even an iota of evidence to suggest that the management established relationship of employer and employee between the parties. Whenever work was taken from Vijay Kumar, it was assigned to him as a contract for service. Consequently it is evident that no evidence has come over the record to confirm that the management ever engaged Vijay Kumar as an employee. Ex MW1/1 are the Recruitment Rules for recruitment in sub staff and clerical cadre. Whenever there is a vacancy, Employment Exchange is requested to sponsor names of eligible persons for appointment. The management may also notify vacancies in leading newspaper, inviting application from open market for recruitment to sub staff and clerical cadre. It is not case of the claimant that he applied against a vacancy advertised by the management or his name was sponsored by the employment exchange. He has not projected that he undertook a test and thereafter he was selected by the management as sub-staff. It is not the case of the workman that he was appointed by the management and then he served it for the post against which he was appointed. All these facts make it clear that the claimant has failed to establish that he was ever appointed by the management to serve it as a sub staff. Claimant has not been able to establish relationship of employer and employee between him and the management.

13. When there was no relationship of employer and employee between the parties, it cannot be concluded that services of the claimant were dispensed with by the management on 25-5-2000. In that situation there is no occasion to adjudicate that action of the management in terminating the services of the claimant was just or legal. The claimant is not entitled for any relief. An award is accordingly passed. It be sent to the appropriate Government for publication.

Dated : 4-3-2010

DR. R. K. YADAV, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2010

का.आ. 1301—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल इन्शोरेन्स कम्पनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, दिल्ली के पंचाट (संदर्भ संख्या 17/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2010 को प्राप्त हुआ था।

[सं. एल-17012/39/2003-आईआर(बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th April, 2010

S.O. 1301—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.17/2004) of the Central Government Industrial Tribunal-cum- Labour Court, Delhi as shown in the Annexure in the Industrial Dispute between the management of National Insurance Company Limited and their workmen, received by the Central Government, on 26-4-2010.

[No. L-17012/39/2003-IR (B-I)]

SURENDRA SINGH, Desk Officer
ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. I, KARKARDOOMA COURT COMPLEX, DELHI**

I. D. No. 17/2004

Vijay Kumar, S/o Shri Budh Ram,
106 - Lodhi Complex,
New Delhi - 110 003

...Claimant

Versus

The Manager,
National Insurance Company Limited,
Jeevan Bharti Tower- II, Level-IV,
124 - Connaught Place,
New Delhi - 110 001

... Management

AWARD

Casual work was taken by the Divisional Manager, National Insurance Company Limited (hereinafter referred to as the management) from Shri Vijay Kumar. He was paid for the work done by him on daily basis. When he was disengaged, he raised a claim for reinstatement of his services. Management had not paid heed to his claim, hence a dispute was raised by him before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-17012/39/2003-IR (B-I), New Delhi dated 22nd of March, 2004 with the following terms :

“Whether the action of the management of National Insurance Company Limited, New Delhi in terminating services of Shri Vijay Kumar, Ex-Temporary sub-staff with effect from 23-5-2000 is just, fair and legal? If not, what relief workman is entitled to and from which date?”

2. Claim statement was filed by the claimant pleading therein that he was engaged by the management at its D.O. -7, Piyare Lal Building, Connaught Place, New Delhi, since 1-11-1993. He worked there as tea boy/water boy for a continuous period of 240 days in each calendar year. He performed his duties to the satisfaction of the

management. A certificate to that effect was issued by the internal audit of the management wherein it has been acknowledged that he had rendered 240 days continuous service. No appointment letter or wage slip was ever issued to him. His services were terminated on 23-5-2000 without any notice or pay in lieu thereof. No retrenchment compensation was paid. The management violated even an order passed by the High Court of Delhi in that regard. He presents that as per policy dated 18-2-98 he is entitled for absorption in the services of the management. He claims that his services may be reinstated with continuity and full back wages and be regularized in the services of the management.

3. The management demurred the claim pleading that there exist no relationship of employer and employee between the parties. Since there was no privity of contract, there does not exist an industrial dispute. Claimant was engaged in supplying tea to the persons working in office situated at Himalya House, Kasturba Gandhi Marg, New Delhi. As and when there was exigency of work, casual work was taken from him. He performed that work in the capacity of an independent contractor. There was no post with the designation of water boy/tea boy with the management. In case he was engaged for any casual job, his engagement came to an end after completion of the job. Consequently the claimant cannot plead that he was an employee of the management and rendered 240 days continuously in a calendar year. His claim of reinstatement as well as absorption is liable to be dismissed.

4. Management has examined Shri Harish Chandra and Assistant Manager to substantiate its stand. No evidence was adduced on behalf of the claimant.

5. On 29-12-09 claimant opted to abandon the proceedings. The Tribunal was constrained to proceed with the matter under rule 22 of Industrial Disputes (Central) Rules, 1957.

6. Shri B. S. Rana, authorized representative, advanced arguments on behalf of the management. None opted to dispel his submissions. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

7. Shri Harish Chandra deposed that he was serving the management since January, 1979. He had worked in Divisional Office No. 7 of the management, from 17-11-95 to 16-8-09 located at 1st floor of 50, Janpath New Delhi. Management does not have any post with the designation of tea boy/water boy. Whenever any recruitment is made for sub staff or clerical cadre, either names are called from Employment Exchange or an advertisement is given in the newspaper, inviting applications from open market. Management is a public sector undertaking. Ex-servicemen are being recruited through Director General Resettlement.

Management has its recruitment rules for recruiting sub-staff or in clerical cadre. Ex.MW1/161 is copy of the recruitment rules. Copy of the attendance register is Ex.MW1/1 (running into 211 pages). Name of Vijay Kumar does not find place in the said register. Payment of tea bills were through vouchers, copies of which are Ex.MW1/2 to Ex.MW1/160. Vijay Kumar was not an employee of the management.

8. Vijay Kumar was serving tea to officials posted in Divisional No. 7 of the management. He used to submit his daily bills for tea served to the officials. Those bills were paid through vouchers. Many a times he used to submit his weekly bills. He was not an employee of the management. His name was never forwarded by the Employment Exchange for appointment as sub staff. He used to serve tea to employees working in other offices located in 50, Janpath, New Delhi. He concedes that often and then Vijay Kumar used to fill water in water coolers. He was paid for that job through petty cash vouchers. Vouchers for the months of May, 1997 reflects that payment on petty cash voucher was made to Sanjay tea stall for filling water in cooler. No written contract was executed between the management and Vijay Kumar to work as a contractor.

9. Out of facts projected by Shri Harish Chandra it emerge over the record that Vijay Kumar used to supply tea to officials of the management. He used to raise his tea bills for which he was paid through petty cash voucher. Often and then casual work was taken from him, for which he was also paid by the management. When he performed casual work, he took the job as a contract for service and not as contract of service. Consequently it is emerging over the record that Vijay Kumar was working as an independent contractor, when he served tea to employees of the management. He raised his tea bills, for which he was paid through petty cash vouchers.

10. Relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee at the time when his services were engaged, need not have known the identity of his employer there must have been some act or contract by which the parties recognized one another as master or servant.

11. No evidence worth name has been brought over the record by Vijay Kumar that he was ever engaged by the management as its employee. There is not even an iota of evidence to suggest that the management established relationship of employer and employee between the parties. Whenever work was taken from Vijay Kumar, it was assigned to him as a contract for service. Consequently it is evident that no evidence has come over the record to confirm that the management ever engaged Vijay Kumar as an employee. Ex MW1/161 are the Recruitment Rules for recruitment in sub staff and clerical cadre. Whenever there is a vacancy, Employment Exchange is requested to sponsor names of eligible persons for appointment. The management may also notify vacancies in leading newspaper, inviting application from open market for recruitment to sub staff and clerical cadre. It is not case of the claimant that he applied against a vacancy advertised by the management or his name was sponsored by the employment exchange. He has not projected that he undertook a test and thereafter he was selected by the management as sub staff. It is not the case of the workman that he was appointed by the management and then he served it for the post against which he was appointed. All these facts make it clear that the claimant has failed to establish that he was ever appointed by the management to serve it as a sub staff. Claimant has not been able to establish relationship of employer and employee between him and the management.

12. When there was no relationship of employer and employee between the parties, it cannot be concluded that services of the claimant were dispensed with by the management on 23-5-2000. In that situation there is no occasion to adjudicate that action of the management in terminating the services of the claimant was just or legal. The claimant is not entitled for any relief. An award is accordingly passed. It be sent to the appropriate government for publication.

Dated: 4-3-2010

DR. R. K. YADAV, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2010

का.आ. 1302—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, दिल्ली के पंचाट (संदर्भ संख्या 34/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2010 को प्राप्त हुआ था।

[सं. एल-12011/39/2008-आईआर(बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th April, 2010

S.O. 1302—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No. 34/2009) of the Central Government Industrial Tribunal, Delhi as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 26-4-2010.

[No. L-12011/39/2008-IR (B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. I, KARKARDOOMA COURTS COMPLEX,
DELHI**

I.D. No. 34/2009

The General Secretary,
All India Bank Staff Association,
33-34, Bank Enclave, Ring Road,
Rajouri Garden, New Delhi -27

... Workman

Versus

The Deputy General Manager,
State Bank of India, Main Branch,
11, Parliament Street,
New Delhi - 110001

... Management

AWARD

A messenger, employed with the State Bank of India, was arrested in a criminal case by crime branch of Delhi Police. Since he was involved in acts of cheating and forgery. He was suspended by his employer on 4th of October, 91. On conclusion of the investigation, a charge sheet was submitted against him, before a court of law. Trial of the said case is still sub-judice. Employee was to superannuate on 30-4-04. Therefore, his suspension was revoked on 4-3-2004. He was transferred to Sultanpuri Branch of the bank, from where he was superannuated. His period of suspension was treated as spent on duty and arrears of his wages were paid on 23-11-2005. Arrears on account of revision of his salary, as per Bipartite Settlement were paid to him on 21-4-06. The employee claimed interest on delayed payment of arrears of his wages. His request was declined by the management. He approached All India Bank Staff Association for redressal of his grievance, who raised a dispute before the Conciliation Officer. Since conciliation proceedings failed the appropriate Government referred the dispute to this Tribunal for adjudication. vide order No. L -12011/39/2008-IR (B-I), New Delhi dated 8-7-2009, with the following terms:

“Whether the claim of the workman Shri Raghu Nath regarding interest on delayed payment from 30-4-2004 to 21-4-2006 is just, proper and legal? If not, what relief is the workman concerned entitled and from which date?”

2. Claim statement was filed by the General Secretary. All India Bank Staff Association pleading therein that Raghu Nath was appointed as a permanent messenger by the bank on 12-7-64. He was placed under suspension on 4-10-97 by the Deputy General Manager, New Delhi Main branch, SBI. His suspension was revoked after 13 years and he was reinstated on 4-3-2004 just 55 days before the date of his superannuation. He was transferred to Sultanpuri branch of the bank from where he retired on 30-4-04. After a long persuasion wages for the period of his suspension was paid after two years. For revoking his suspension management had not followed circular dated 26-5-82. He was tortured and victimised for a period of 13 years for no fault on his part. The workman is entitled for all benefits, damages and interest on the delayed payment. It has been claimed that interest on delayed payment from 30-4-04 to 21-4-06 may be accorded in favour of the workman.

3. Claim was demurred by the management pleading therein that the All India Bank Employees Association is not a recognized union of employees of the management. The said union cannot espouse the claim of the workman. For want of proper espousal there is no industrial dispute, which can be adjudicated by this tribunal. Factum of suspension of the workman on 4-10-97 has not been disputed. It has been pleaded that the workman was involved in commission of offences of cheating, forgery and use of fabricated documents as genuine. He was arrested by crime branch of Delhi Police and sent up for trial. Trial in the said case is still sub-judice before a court of competent jurisdiction. Since the claimant was to retire on 30-4-04, the Disciplinary Authority had no option but to revoke the suspension. His suspension was, therefore revoked on 4-3-04 and entire period of his suspension was treated as duty. He was paid full salary and allowances for his suspension period. An amount of Rs. 2,94,030 was paid to him on 23-11-05. Delay in releasing arrears of pay and allowance was on account of outstanding claims against the workman for loans availed by him from various cooperative societies whose demands were not met by him. Those demands were to be discharged from his salary and allowances and after making payment towards those demands balance of his salary and allowance was released to him on 23-11-05. An amount of Rs. 29052 as arrears of revision of his salary in pursuance of Bipartite Settlement was paid to him on 21-4-06. He is not entitled to any interest or damages on delayed payment of his salary and allowances. His claim is liable to be dismissed.

4. No evidence was adduced on behalf of the workman. On 22-10-09 workman opted to abstain from the proceedings. The Tribunal was constrained to proceed with the matter under rule 22 of the Industrial Disputes (Central) Rules, 1957. Shri Y. K. Sabherwal tendered his affidavit as evidence on behalf of the management.

5. Ms. Kittu Bajaj, authorized representative, advanced arguments on behalf of the management. None came forward to present his point of view on behalf of the workman. Written submissions were also filed on behalf of the management have given my careful considerations to the arguments advanced on the bar and cautiously perused the record. My finding on issues involved in the controversy are as follows:

6. Shri Y. K. Sabherwal, Manager (O. A. D.), Parliament Street branch. State Bank of India swears in his affidavit that workman was suspended on 4-10-97, since he was found involved in commission of grave offences punishable under section 420, 467, 468, 471, 473 read with section 120-B of the Penal Code. The said case is still sub-judice. Since the trial of the case could not conclude before the date of superannuation of the workman, his suspension was revoked by the Disciplinary Authority vide its order dated 4-3-04. Period of suspension was treated as spent on duty. The workman retired on 30-4-04. On 23-11-05 he was paid full salary and allowances amounting to Rs. 2,94,030 for the period of suspension. Delay in releasing all his arrears of pay and allowances was on account of outstanding claims against the workman for loans availed by him from various cooperative societies. He has not discharged those liabilities, which were to be discharged from his pay and allowances. After payment of outstanding claims of those cooperative societies, his full salary and allowances were released to him on 23-11-05. An amount of Rs. 29,052 on account of revision of his salary as per Bipartite Settlement was paid to him on 21-4-2006. All eligible amount of his arrears of pay and other terminal benefits were paid to him as per rules, without availing any service from the workman for the entire period of his suspension. The amount paid by the management cannot attract any interest.

7. To substantiate the facts testified by Shri Sabherwal, the management has relied letter dated 17-12-2005 written by the Administrator, Chandigarh and Delhi Circle, State Bank Staff Association Co-operative Urban Salary and Any Pension Earners Thrift and Credit Society Limited, wherein a demand of Rs. 97800 was raised towards a loan obtained by the workman. Letter dated 16-12-05 written by State Bank of India Staff Co-operative Thrift and Credit Society, Todapur, New Delhi was also relied wherein a demand of Rs. 30420 was raised in respect of loan obtained by the claimant. Letter dated 23-11-05 written by State bank of India Staff Co-operative Thrift and Credit Society raising a demand of Rs. 30420 in respect of loan obtained by Raghunath was also relied. Letter dated 17-5-05 written by SBI Staff Cooperative Thrift and Credit Society raising a demand of Rs. 29720 in respect of loan obtained by the claimant was also relied. In the same manner letter dated 27-7-05 written by the Chandigarh and Delhi circle State Bank Staff Association Cooperative Thrift and Credit Society Salary and any Pension Earner Thrift and

Credit Society Limited was relied by the bank. Letters dated 17-5-05, 2nd of June, 05, 23-8-05, 20th of September, 2005, 22-8-2005 has been relied by the bank, which were received from aforesaid cooperative society in respect of outstanding loan amounts raised by the workman. Out of these letters the management bank has been able to show that various loans were raised by the claimant from the aforesaid cooperative societies, which remained unpaid.

8. Section 58 of the Multi State Cooperative Societies Act, 1984 cast an obligation on the employer disbursing salary or wages to the employee to deduct an amount as may be specified in the agreement and to pay the same to the cooperative society towards the outstanding arrears of loan availed by an employee. This obligation is irrespective of the fact that whether the branch manager or head of the office of the borrower employee has signed undertaking in favour of the society for recovering the society's dues or not. A statutory obligation has been cast on the bank to deduct amount on receipt of requisition in writing from the cooperative society in that behalf, when the loan amount remains outstanding against an employee.

9. Shri Y. K. Sabherwal deposed that there were various loans availed by the claimant from the aforesaid cooperative societies. He failed to pay those loans and those cooperative societies had sent written requisition requesting the management bank to deduct outstanding amount of loan from his salary. To discharge that obligation management bank was under an obligation to pay outstanding amount of loan to those cooperative societies. When those loan amounts were paid an amount of Rs. 294030 was paid to the claimant towards his full salary and allowance for the period of his suspension on 23-11-05. Since written requisition were received by the bank at different intervals in the year 2005, bank was under obligation to make payment of outstanding amount of loan raised by the claimant from the aforesaid credit societies. On payment of those outstanding amounts his full salary and allowances for the period of suspension was rightly released in his favour on 23-11-05. There is no dispute between the parties that an amount of Rs 29030 was to be paid to the claimant, after payment of outstanding amount of his loan to the various credit and thrift societies. Consequently it is evident that payment released in favour of the workman on 23-11-05 was well in time. There was no delay on the part of the bank to release his full amount of salary and allowance for the period of his suspension.

10. An amount of Rs. 29052 on account of revision of his salary as per Bipartite Settlement was paid to him on 21-4-06. This amount was paid him after making payment of various loans received by the claimant from aforesaid credit and thrift societies. One cannot say that there was a delay on the part of the management bank in releasing arrears of his revision of pay in pursuance of Bipartite

Settlements. Therefore, an ordinary prudent man would not find any delay in release of arrears of pay and allowances for the period of suspension as well as arrears of pay in pursuance of Bipartite Settlement. When payments were delayed on account of lapses on the part of the claimant in making payment of his loan amount and the bank was to discharge its statutory obligation in making payment of loan amount to Credit and Thrift Societies it cannot be said that delay, in making payment to the claimants was improper illegal or unjustified. The claimant is not entitled to any interest on those delayed payments. Therefore, the reference is to be answered in favour of the management bank and against the claimant.

11. There is other fact of the coin. Claim has been raised by the General Secretary, State Bank of India Bank Association. No evidence worth name has come over the record that All India Bank Staff Association was recognized union or a union having majority of employees of the establishment of the management as its members. On the other hand the management contends that All India Bank Staff Association is not at all recognized union nor it represents majority of the employees employed in the establishment of the management. It was claimed that All India Bank Staff Association was not competent to espouse the dispute for adjudication.

12. Provisions of section 10 of the Industrial Disputes Act, 1947 (in short the Act) make it clear that the appropriate Government may refer an existing or apprehended dispute to the Industrial Tribunal for adjudication. Industrial dispute has been defined by clause (k) of section 2 of the Act. Definition given in the said sub-section encompasses within its sweep any dispute or difference between the employer and employers, or between employer and workmen or between workmen and workmen, which is connected with the employment or non employment or terms of employment or with the conditions of labour of any person. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy of the legislature is also implicit in the definition of the industrial dispute.

13. The Apex Court in *Bombay Union of Journalists* [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned the problem of espousal by them generally presents little difficulty, such workmen who are members

of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship it must be shown that they or connected together and arrive at understanding by a resolution or by other means and collectively submitted the dispute.

14. The expression "Industrial disputes" has been construed by the Apex Court to include individual dispute because of the scheme of the Act. In *Raghu Nath Gopal Patvardhan* [1957 (1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thron that (1) a dispute between the employer and a single workman cannot be an industrial dispute. (2) it can not be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In *Dharampal Prem Chand* [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of *Indian Express Newspaper (Pvt.) Limited* [1970 (1) LLJ 132]. However in *Western India Match Company* [1970 (II) LLJ 256] the Apex Court referred the precedent in *Dimakuchi Tea Estat's case* (supra) and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or sustantial interest".

15. What a substantial or considerable number of workmen would in a given case, depend on particular facts of the case. The fact that an "industrial dispute" is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union at whose instance an "industrial dispute" concerning individual workman is refered for adjudication 'as on its roll a few of the workman of the establishment as its members, it cannot be inferred that the individual dispute

has been converted into an "industrial dispute". The Tribunal has therefore to consider the question as to how many of the fellow workmen actually espoused the cause of the concerned workman by participating in the particular resolution of the union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in *P. Somasundram* [1970 (1) LLJ 558].

16. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workmen's cause it is sufficient to convert it into an industrial dispute. In *Pardeep Lamp Works* [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co workmen, if not a majority of them. Since this union was not registered or recognized the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus the cases of the dismissed workmen were espoused by the new union yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

17. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of Section 36 of the Act by a number of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in *Gammon India Limited* [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workmen or by an appreciable number of the workmen. In other words, the validity of the reference of an

industrial dispute must be judged on the facts as they stood on the date of reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in *Western India Match Co. Ltd.* [1970 (II) LLJ. 256].

18. A collective dispute would constitute an industrial dispute. A collective dispute however does not mean that all the workmen or majority of the workmen espouse and support the dispute. All that necessary is that dispute in order to become an industrial dispute should have the support of substantial section of the workmen concerned in the establishment. Whether dispute has acquired character of industrial dispute is to be tested on the touch stone of it being supported by the union of the workmen of the employer against whom the dispute is raised. The unions are generally of two types that is (i) the unions of workmen of a particular establishment and (ii) generally unions of which workmen of a particular establishment become members. As far as union of the workmen of the establishment itself is concerned the problem of espousal by them does present little difficulty since such workmen who are members of such union generally have a community of interest with an industrial employee, who is one of their fellow members. But the difficulty arise when the cause of a workmen in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of whose membership is open to the workmen of other establishment as well in that industry. In such a case a union which has only microscopic number of the workmen as its members cannot sponsor any dispute arising between the workmen and the management.

19. Herein the case the dispute was raised by All India Bank Staff Association. No evidence worth name has come over the record that the said Association has majority of membership of the employees of the establishment of the management. The Association is not at all recognised nor it has majority of the employees of the State Bank of India as its member. In such a situation one cannot say that the Association is having majority of its member from the employees of the establishment of the management. A microscopic membership of the employees of the State Bank of India would not entitle the Association to espouse the claim of Shri Raghunath the workmen. Consequently it is evident that the Association was not competent to espouse the dispute. The dispute does not get the colours of an industrial dispute and is liable to be rejected on this score also.

20. In view of the foregoing discussions it is evident that the claim is liable to be rejected. Consequently the claim preferred by the All India Bank Staff Association is brushed aside. An award is accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 4-3-2010

Dr. R. K. YADAV, Presiding Officer